

1                   IN THE SUPREME COURT OF THE UNITED STATES

2   - - - - - x

3   CURT MESSERSCHMIDT, ET AL.,                   :

4                               Petitioners                   :   No. 10-704

5                               v.                               :

6   BRENDA MILLENDER, AS EXECUTOR OF                   :

7   THE ESTATE OF AUGUSTA MILLENDER,                   :

8   DECEASED, ET AL.                                       :

9   - - - - - x

10   Washington, D.C.

11   Monday, December 5, 2011

12

13                               The above-entitled matter came on for oral  
14   argument before the Supreme Court of the United States  
15   at 11:08 a.m.

16   APPEARANCES:

17   TIMOTHY T. COATES, ESQ., Los Angeles, California; on  
18       behalf of Petitioners.

19   SRI SRINIVASAN, ESQ., Principal Deputy Solicitor  
20       General, Department of Justice, Washington, D.C.; for  
21       United States, as amicus curiae, in support of  
22       Petitioners.

23   PAUL R.Q. WOLFSON, ESQ., Washington, D.C.; on behalf of  
24       Respondents.

25

1	C O N T E N T S	
2	ORAL ARGUMENT OF	PAGE
3	TIMOTHY T. COATES, ESQ.	
4	On behalf of the Petitioners	3
5	ORAL ARGUMENT OF	
6	SRI SRINIVASAN, ESQ.	
7	For United States, as amicus curiae,	20
8	in support of Petitioners	
9	ORAL ARGUMENT OF	
10	PAUL R.Q. WOLFSON, ESQ.	
11	On behalf of the Respondents	31
12	REBUTTAL ARGUMENT OF	
13	TIMOTHY T. COATES, ESQ.	
14	On behalf of the Petitioners	59
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (11:08 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear  
4 argument next in Case 10-704, Messerschmidt  
5 v. Millender.

6 Mr. Coates.

7 ORAL ARGUMENT OF TIMOTHY T. COATES

8 ON BEHALF OF THE PETITIONERS

9 MR. COATES: Mr. Chief Justice, and may it  
10 please the Court:

11 In Malley v. Briggs and United  
12 States v. Leon, this Court set forth a very high  
13 standard for denying qualified immunity in the civil  
14 context or suppressing evidence in the criminal context  
15 under circumstances where a police officer has procured  
16 a warrant that is subsequently determined to be invalid.  
17 Specifically, the Court held that the initial  
18 magistrate's determination is -- is entitled to great  
19 deference, and that you will go behind that only in  
20 cases where the officer falsified information or omitted  
21 exculpatory information, where the affidavit was  
22 bare-bones, or there was some indication that the  
23 judicial officer did not perform the function, and then  
24 a catch-all provision, where the warrant was so lacking  
25 in indicia of probable cause that no reasonable officer

1     could even submit it for a magistrate's determination.  
2     And specifically in Malley, the Court said it had to be  
3     the actions of an officer that was plainly incompetent  
4     or knowingly violating the law.

5                 This case arises from a Ninth Circuit  
6     decision that we submit does not apply the Court's  
7     standards, under circumstances where the officer  
8     submitted, far from a bare-bones affidavit, but a highly  
9     detailed, factual affidavit that we submit provided  
10    probable cause for the search or at least, under the  
11    Court's qualified immunity jurisprudence, a reasonable  
12    officer could believe that the warrant had probable  
13    cause.

14                CHIEF JUSTICE ROBERTS:   There -- I suppose  
15    one new feature of the case is the fact that these  
16    officers submitted the affidavit to their superiors, who  
17    were -- were attorneys.

18                MR. COATES:   Correct.   There --

19                CHIEF JUSTICE ROBERTS:   Have we addressed  
20    that in a prior case?

21                MR. COATES:   I don't know that the Court --  
22    the Court has -- in I believe the exclusion context I  
23    think I have seen it.   I can't recall the case, but I  
24    believe it has, and the circuit courts certainly have  
25    talked about that, as an indicia of good faith, the

1 officer being willing to submit his work to someone else  
2 to review it. So --

3 JUSTICE SCALIA: But it isn't good faith  
4 here, that's the problem. We don't have a good faith  
5 test, we -- we have a test that goes beyond good faith.  
6 Even if the officer is in good faith, according to the  
7 test we have set forth, if he's so stupid that -- that  
8 he -- he executes a warrant that no reasonable officer  
9 could think was correct, he's -- he's in the pot, right?

10 MR. COATES: Well, that -- that's the test  
11 that the Court has set out. But it's a high test,  
12 plainly incompetent or knowingly violating the law. And  
13 I think these are additional factual circumstances that  
14 show at least the officer is trying to be careful, that  
15 this isn't something that's been -- been tossed off.

16 JUSTICE SOTOMAYOR: Counsel, I thought in  
17 the Leon case that in fact, just like the claim in this  
18 case, that the affidavit was submitted to supervisors  
19 and the Court created the Leon test in spite of that.  
20 So to say that we have a case on point, Leon itself is  
21 on point. We created the test in the face of  
22 supervisor's review. You are not actually, are you,  
23 arguing a Nuremberg defense now?

24 MR. COATES: No. I'm just saying that --

25 JUSTICE SOTOMAYOR: That -- that simply

1     because supervisors decide that it's okay, that that --

2                     MR. COATES:   No.

3                     JUSTICE SOTOMAYOR:   -- exculpates someone  
4     from responsibility?

5                     MR. COATES:   Certainly not.   And as I say,  
6     this comes up in the qualified immunity context  
7     repeatedly among the circuit courts.   They've recognize  
8     it as a -- as a factor.   But it is not dispositive, not  
9     by any means.   I agree with -- I agree with that, Your  
10    Honor.

11                    JUSTICE SOTOMAYOR:   All right.   Then let's  
12    go to the other two ways that I think you are asking us  
13    to overrule our precedent.   The first is using  
14    subjective information that a police officer knows, but  
15    hasn't disclosed in the warrant.   I'm having a little  
16    bit of difficulty understanding how an entire warrant  
17    regime that presumes that the magistrate has all  
18    pertinent information, and that's why you would be let  
19    off the hook, how you can excuse a police officer when  
20    he doesn't place that information in front of the  
21    magistrate?

22                    MR. COATES:   The way that has generally come  
23    up has not been in the validity of the warrant for  
24    purposes of the Fourth Amendment, but in terms of  
25    qualified immunity for the officer or exclusion of the

1 evidence under -- or not -- or nonsuppression, rather,  
2 under the good faith exception. And it's whether the  
3 officer, in light of the totality of the circumstances,  
4 might not have recognized that the warrant was deficient  
5 if the warrant otherwise isn't -- isn't bare-bones.

6 And I think -- Leon itself in footnote 23  
7 incorporates the Harlow standard of totality of  
8 circumstances.

9 JUSTICE SOTOMAYOR: Tell me how, this case,  
10 the bare-bone affidavit was sufficient? All it says is  
11 that this defendant is a member of a gang, but when the  
12 police officer is questioned, he is asked whether this  
13 crime at issue had any connection to his gang  
14 relationship and the answer was no. So how is the  
15 request of the warrant to search for all gang-related  
16 indicia anything more than the general warrant that our  
17 Founding Fathers in part passed the Fourth Amendment  
18 against?

19 MR. COATES: Oh, I mean, this is not per se  
20 a gang crime.

21 JUSTICE SOTOMAYOR: This is almost like --

22 MR. COATES: Without a -- without a doubt,  
23 it's not a what we consider a gangland crime, of one  
24 gang member against the other. It's a domestic assault  
25 by a gang member on his girlfriend with a sawed-off

1     shotgun in public, right after police officers that were  
2     there to protect her had left. So it's not gang-related  
3     in that sense. But I don't think that the gang  
4     membership is irrelevant to the investigation in this  
5     case. You know, as we note and I think it is fairly  
6     recognized, gang members have the means to procure and  
7     use weapons beyond that of ordinary people.

8                     JUSTICE GINSBURG: So if you have a gang  
9     member and the crime has absolutely nothing to do with  
10    gang membership -- that I think is the case here; it's a  
11    domestic assault -- as long as you are a gang member,  
12    than every warrant can say "search for all gang-related  
13    information"? That's essentially your position, isn't  
14    it?

15                    MR. COATES: No, it isn't, because it's  
16    always a fact-specific inquiry. The courts made that  
17    clear in Illinois v. Gates and for qualified immunity in  
18    Anderson v. Creighton. We're --

19                    JUSTICE GINSBURG: But you -- you said this  
20    is domestic assault. There is no gang activity involved  
21    in that assault, right?

22                    MR. COATES: Well, the gentleman is using a  
23    sawed-off shotgun, which is a weapon associated with --  
24    with gangs. I don't think it's a stretch for an officer  
25    to think that there might be some connection to the



1 manner in which he procured that weapon, might hide that  
2 weapon --

3 JUSTICE GINSBURG: So anyone who has a  
4 weapon and is a member of a gang then can be -- there  
5 can be a search for any and all weapons and material  
6 related to weapons?

7 MR. COATES: Well, it depends on the  
8 circumstances of the crime that you are investigating.  
9 Here we have an assault, we have a domestic assault with  
10 indications that the gentleman intends to continue it.  
11 And indeed that's why the warrant is for all weapons;  
12 because it would make little sense to say you can go and  
13 you could find a sawed-off shotgun --

14 JUSTICE GINSBURG: I'm on to the part about  
15 all gang-related activities, when the crime has nothing  
16 to do with the -- with the gang. Let's -- let's stick  
17 to that. Then there is another issue. But this  
18 said warrant to search for any and all gang-related  
19 items?

20 MR. COATES: Correct, Your Honor. But the  
21 point is that's to be used to possibly tie Mr. Bowen to  
22 any weapon that was found. It's identification  
23 information. If they found, for example, the sawed-off  
24 shotgun there and his gang colors with his gang moniker,  
25 that would certainly help to tie him to that shotgun.

1 JUSTICE GINSBURG: But they didn't need to  
2 tie him to the shotgun. They had photographs of him  
3 with the shotgun.

4 MR. COATES: They have some evidence, but  
5 you don't have to stop just because you have some  
6 evidence. I mean, you are entitled to build your case  
7 as strong as you --

8 JUSTICE GINSBURG: What -- what do you need  
9 more than here he is, with his gun, the defendant  
10 himself and his gun? I mean, what --

11 MR. COATES: Well, if you found the actual  
12 shotgun there wrapped in his -- in his gang -- gang  
13 colors with his gang moniker, I mean, it would make an  
14 even stronger case. And I also note, say you find a.  
15 45-caliber pistol wrapped in his gang colors with his  
16 gang moniker. I don't think --

17 JUSTICE SOTOMAYOR: What do we do with the  
18 officer's testimony when he said, "Did you have any  
19 reason to believe there were any more weapons in the  
20 house?" He said, "No." What -- when an officer says  
21 that, why would then he think that he has complete  
22 license to go and ask for a warrant that's looking for  
23 more guns, when there is only evidence of him possessing  
24 one?

25 MR. COATES: Because, again, the nature of

1 gang membership is that gangs --

2 JUSTICE SOTOMAYOR: So you are answering --  
3 you are answering Justice Ginsburg by saying that any  
4 time a gang member commits any crime, the police are  
5 entitled to seek a warrant that permits the search for  
6 anything they have in their home that relates to their  
7 gang membership and to -- to guns?

8 MR. COATES: No, because I think it depends.  
9 Here we have a crime that definitely involves a gun,  
10 involves an illegal gun --

11 JUSTICE SOTOMAYOR: That did not involve --  
12 by the officer's admission and your own, that wasn't  
13 gang-related.

14 MR. COATES: The assault, correct.

15 JUSTICE SOTOMAYOR: The assault --

16 MR. COATES: But the manner in which he  
17 procures the weapon, might dispose of the weapon, the  
18 nature of the weapon itself.

19 JUSTICE SOTOMAYOR: But wait a minute. That  
20 has nothing to do with the gang, unless you are saying  
21 that you had proof that the gang did something illegally  
22 in helping him procure the weapon. What information did  
23 you have to suggest that?

24 MR. COATES: Again, the nature of a  
25 sawed-off shotgun; it's an illegal weapon in and of

1     itself.

2                   JUSTICE SOTOMAYOR:   Counsel --

3                   CHIEF JUSTICE ROBERTS:   Whose house -- whose  
4     house was this?

5                   MR. COATES:   Augusta Millender's house, Ms.  
6     Millender's home.

7                   CHIEF JUSTICE ROBERTS:   It was not the  
8     defendant's house?

9                   MR. COATES:   Correct.   No, he was a foster  
10    son who had come back to stay.

11                   JUSTICE BREYER:   To what --

12                   JUSTICE KAGAN:   What's the -- I'm sorry.

13                   JUSTICE BREYER:   To what extent are we  
14    supposed to take things that aren't in the affidavit or  
15    the warrant itself as relevant?   I mean, the only thing  
16    that bothers me as I read the affidavit, it doesn't say  
17    someone else is living in the house.   At least I didn't  
18    see that.

19                   And then the statement of Justice Sotomayor  
20    said:   Well, that's later on in a deposition.   So -- so  
21    if I were the magistrate sitting there and I read the --  
22    the affidavit, I might think I did have cause, At least  
23    it's close, maybe, to allow them to search for all the  
24    guns in the house.   I might think they all belong to  
25    him.   And anyway, I might think he thought that this

1     could be used to -- other guns could be used to go after  
2     her again.

3                     But when I read, he says: Oh, I had no  
4     cause at all for thinking that. Why isn't that the end  
5     of it, if we're supposed to take that into account?

6                     MR. COATES: Well, I mean, again, I think,  
7     as he sets forth his experience as a gang officer, and  
8     the manner in which gangs dispose of, procure weapons --

9                     JUSTICE BREYER: He didn't say much about  
10    the gang.

11                    MR. COATES: No.

12                    JUSTICE BREYER: I'm asking you a specific  
13    question. I mean, if I were supposed to take into  
14    account his statement, I had no reason -- to paraphrase  
15    it a little -- thinking that any of these guns, other  
16    guns, were going to be used for any purpose that's  
17    illegal -- if he'd said that afterwards, if I take that  
18    into account, I say, why isn't that the end of the case?  
19    He has no cause to ask for the other guns, period.

20                    MR. COATES: Well --

21                    JUSTICE BREYER: Now that was the question,  
22    I think roughly, that you were being asked and I would  
23    like to hear the answer. I thought the answer would be:  
24    I don't have the right to take it into account. Now, do  
25    I or don't I?

1                   MR. COATES: Well, I mean, it's an -- it's  
2 an objective standard. It's what a reasonable officer  
3 would do with the facts before him.

4                   JUSTICE BREYER: Wait. Before him?

5                   MR. COATES: Yes.

6                   JUSTICE BREYER: Or before the -- do I look  
7 at the affidavits and the warrant, or do I also look at  
8 things that are in neither of those documents, but were  
9 in the officer's head?

10                  MR. COATES: For purposes of determining the  
11 Fourth Amendment validity of the warrant, the Court has  
12 said you -- you look at the warrant. Under the  
13 qualified immunity test and in the criminal suppression  
14 context of good faith, you can go outside that and look  
15 at the totality of what the officer knew, and if in  
16 light of what he knew whether he could have believed it  
17 was so.

18                  JUSTICE BREYER: So if I look at whether he  
19 was in good faith, if he has any training at all, I  
20 would guess that if he thought that there is no -- I  
21 don't remember the exact words -- no reason, no reason  
22 to believe there would be any weapons in the house, no  
23 reason to believe there would be any handguns in the  
24 house, and then I say, I want a warrant to search for  
25 handguns in the house, it looks like you are asking for

1 a warrant to search for that for which you have no  
2 reason to believe it's there. Now, that I would have  
3 thought was not good faith. That was contrary to the  
4 Fourth Amendment. Why isn't it?

5 MR. COATES: Because you -- you still have  
6 under 1524(a)(3) of the California Penal Code the -- the  
7 ability to search for items that might be used with the  
8 intent to commit another crime. And I think if this  
9 was --

10 JUSTICE BREYER: Even though you can search  
11 a person's house -- why don't I search the person's  
12 house for an atomic bomb? And I say: Why are you doing  
13 that? He says: I have no reason to believe it's there.  
14 But that is a constitutional search?

15 MR. COATES: Well, again I think -- going  
16 back here in terms of -- stepping back from good faith  
17 as opposed to probable cause, I don't think it's  
18 irrelevant that this guy is a gang member. I don't  
19 think it's unusual to think that, while you might know  
20 specifically whether there's a handgun or not --

21 JUSTICE SCALIA: Excuse me. Why are you  
22 going back to good faith? I mean --

23 MR. COATES: Well --

24 JUSTICE SCALIA: That's -- that is what I  
25 think is the problem with this case. If it's a good

1 faith test, you come out with one result. But the test  
2 we have expressed is not good faith. This -- this  
3 police officer could have been in the best of faith, but  
4 if he's a very bad police officer he's in the soup,  
5 right?

6 MR. COATES: Yes.

7 JUSTICE SCALIA: We don't have a good faith  
8 test for this purpose.

9 MR. COATES: Sure. But a -- but the  
10 standard is plainly incompetent or knowingly violating  
11 the law, and I think -- again, there is enough detail in  
12 there that I don't think it is illogical to say there is  
13 some connection between gang membership and the  
14 possibility or even the fair probability that there are  
15 other weapons in a residence.

16 CHIEF JUSTICE ROBERTS: Of course --

17 JUSTICE SCALIA: So when -- I'm sorry.

18 CHIEF JUSTICE ROBERTS: I was just going to  
19 say, of course you are making the case somewhat harder  
20 for yourself because the issue here is whether it was  
21 reasonable for him to say, let me check and see what my  
22 superiors say about this, and then after that review for  
23 him to say, let's see what the magistrate thinks about  
24 this, right?

25 MR. COATES: Correct. It's a -- it's a



1 further step back, because whether it's even reasonable  
2 for him to ask the magistrate for a determination --

3 JUSTICE BREYER: What cause is there to  
4 think -- what cause is there to think that the gang guns  
5 will be used to commit a crime.

6 MR. COATES: This is a gentleman who just  
7 perpetrated assault with a sawed off shotgun. He didn't  
8 make -- specify, in terms of his threat, that he was  
9 confining his further attack to a sawed off shotgun. I  
10 just don't think it's a stretch of logic for an officer  
11 to believe that if he found a .45-caliber pistol there  
12 wrapped in gang colors that he should be able to seize  
13 it to prevent --

14 JUSTICE SCALIA: But the warrant didn't just  
15 authorize, you know, firearms wrapped in gang colors.  
16 It lets him search for any evidence of gang membership,  
17 right?

18 MR. COATES: Correct.

19 JUSTICE SCALIA: What possible purpose could  
20 that serve?

21 MR. COATES: Again, because the evidence of  
22 gang -- indicia of gang membership could be used to tie  
23 him to things in the residence that you might find,  
24 absolutely. It's an identifying characteristic of Mr.  
25 Bowen.

1 JUSTICE SCALIA: If they were wrapped in it  
2 yes. But we know he is a gang member.

3 MR. COATES: Sure.

4 JUSTICE SCALIA: So all that the finding of  
5 gang membership decals or whatever they wear, all that  
6 would show is indeed this guy was a gang member.

7 MR. COATES: Well, excuse me, Your Honor.  
8 And present in that particular premises, it might show  
9 ownership or control, it might show access to the  
10 weapons. It's not relevant to that --

11 JUSTICE SCALIA: But they knew he was in  
12 that premises, I mean that -- I really don't understand  
13 how you can possibly search for indicia of gang  
14 membership when you know the man's a gang member, so  
15 what?

16 MR. COATES: Well, again, Your Honor, it  
17 ties him closer. It shows him them at the property.

18 JUSTICE SOTOMAYOR: But tell me something.  
19 There is ten people in this house. There is ten people  
20 in this house and as I understand it from the  
21 questioning, they also knew other gang members were  
22 there. So even if they found gang colors, did they tell  
23 the manufacturer or the magistrate that -- what would  
24 that prove when there is multiple members in the house.

25 MR. COATES: Well, you could find again,

1 gang member -- indicia gang membership as to him.

2 JUSTICE SOTOMAYOR: Well, he admitted to  
3 that.

4 MR. COATES: Well, correct. And he is also  
5 a member of several gangs, so you could find unique  
6 colors for one of his gangs and not for the other.

7 JUSTICE SOTOMAYOR: What does that have to  
8 do with anything other than a general search -- a  
9 general search.

10 MR. COATES: A general search is evidence  
11 that --

12 JUSTICE SOTOMAYOR: Because again, in the  
13 hope of finding evidence of other crimes.

14 MR. COATES: No.

15 JUSTICE SOTOMAYOR: That's what it sounds  
16 like.

17 MR. COATES: No. Because it would tie him  
18 to anything found in that residence. Again, if you  
19 found a .45 caliber pistol --

20 JUSTICE GINSBURG: What about a provision  
21 for any photographs that depict evidence of criminal  
22 activity? That seems to me as general as you can get.  
23 Photographs depicting evidence of criminal activity.

24 MR. COATES: That actually is in the section  
25 that deals with indicia of gang membership. It has been

1 carved out by Respondents for the first time as a  
2 separate category. I note it was not argued down below  
3 that way, it was not viewed at the district court that  
4 way and it was not viewed by the circuit judges that  
5 way. And I do have to say that we're sitting here  
6 looking at 11 judges and like 6 attorneys have looked at  
7 this and they have never brought that out separately.  
8 And now we are saying that should have jumped out to the  
9 officer's separately.

10 I think we cite case law saying that you  
11 should interpret that within the context of the entire  
12 provision which is the indicia of gang membership  
13 provision. And if I may, I would like to reserve the  
14 balance of my time for rebuttal.

15 CHIEF JUSTICE ROBERTS: Thank you, Counsel.  
16 Mr. Srinivasan.

17 ORAL ARGUMENT OF SRI SRINIVASAN,  
18 FOR UNITED STATES, AS AMICUS CURIAE,  
19 IN SUPPORT OF PETITIONERS

20 MR. SRINIVASAN: Thank you,  
21 Mr. Chief Justice, and may it please the Court:

22 When an officer follows the favored practice  
23 under the Fourth Amendment of obtaining a warrant from a  
24 neutral magistrate before conducting a search, the  
25 officer in all but the most narrow circumstances can

1     rely on the magistrate's independent determination of  
2     probable cause.

3                   JUSTICE KAGAN:   Mr. Srinivasan, there are  
4     two categories of materials here, one is the search for  
5     other guns and the other is the search for anything  
6     relating to gang membership.  If we think that those two  
7     categories present different questions, if we think that  
8     one is more beyond a balance than another, that an  
9     officer might have qualified immunity from let's say the  
10    guns but not the evidence of gang membership, what would  
11    happen in this case at that point?

12                  MR. SRINIVASAN:  Well, I think one of the  
13    questions that would arise is whether the one as to  
14    which you thought there was a problem would expand the  
15    scope in a meaningful way.  Because if -- let's take  
16    Your Honor's hypothesis that there is less of a reason  
17    to be concerned about the firearms related aspects of  
18    the warrant than the gang related parts of the warrant,  
19    then the question would arise whether you would have a  
20    Fourth Amendment violation in the first place.

21                  Because if the gang related parts of the  
22    warrant didn't expand the scope of the search in such a  
23    way that would implicate independent privacy interest,  
24    there wouldn't be a Fourth Amendment problem with that  
25    aspect of the warrant and therefore you wouldn't have

1 the qualified immunity issue for sure.

2 JUSTICE SCALIA: What does that depend on,  
3 whether you would look for the indicia of gang  
4 memberships in places where you wouldn't look for guns,  
5 is that it?

6 MR. SRINIVASAN: That's right. You look at  
7 the two aspects of the warrant and you ask whether the  
8 second one which is hypothesized to be the problematic  
9 one would allow you to search in places or search with  
10 more intensity than the first --

11 JUSTICE SCALIA: Well, if you are looking  
12 for photographs that show gang membership, I guess you  
13 could look through photograph albums; you wouldn't  
14 really look there for guns, would you?

15 MR. SRINIVASAN: Well, but no. I think the  
16 relevant is page 52 of the Joint Appendix. That is what  
17 sets fourth the two paragraphs at issue. And the first  
18 paragraph which Justice Kagan supposes doesn't raise a  
19 problem and I'll -- to that assumption. It provides not  
20 only for searches of all firearms, but it provides and  
21 we think legitimately for searches of any receipts or  
22 paperwork showing the purchase, ownership or possession  
23 of the guns being sought. And so it -- and paperwork  
24 certainly includes photographs. Because if you find  
25 photographs of an individual carrying a particular

1 firearm, that's good evidence. So photographic evidence  
2 is within the scope of the first paragraph not just the  
3 second. And so it does raise the question of whether  
4 the second paragraph increases the scope.

5           The other point I would raise in this  
6 respect is that in the second paragraph itself the  
7 anchor sentence in some respects in the second paragraph  
8 is the second sentence, which discusses not gang related  
9 indicia in particular but articles of personal property  
10 tending to establish the identity of persons and control  
11 of their premise or premises writ large. And that  
12 provision has not been seen to have a problem associated  
13 with it thus far. The district court thought it was  
14 okay. The Court of Appeals at page 27(a) of the  
15 petition appendix seemed to assume it was okay. And  
16 that's understandable because there are a legion of  
17 cases that support those sorts of provisions, including  
18 the Ewing case cited by the majority below.

19           JUSTICE ALITO: There is something very  
20 strange about the rule that we are applying here. A  
21 warrant was issued by a judge in the Superior Court,  
22 isn't that right.

23           MR. SRINIVASAN: Yes, I believe so.

24           JUSTICE ALITO: And -- and so that judge,  
25 who is a lawyer and was appointed as a judge and

1 presumably has some familiarity with the Fourth  
2 Amendment, found that there was probable cause to search  
3 for all of these things. And now we are asking whether  
4 a reasonable police officer who is not a lawyer and  
5 certainly is not a judge should have been able to see  
6 that this call that was made by a judge was not only  
7 wrong but so wrong that it -- you couldn't reasonably  
8 think that the judge might be correct. Is there some  
9 way to phrase this, if this rule is to be retained in  
10 any form, is there some way to phrase it so that it is  
11 narrowed appropriately?

12 MR. SRINIVASAN: Well, I -- I think the  
13 court has attempted to do that in Malley and Leon  
14 itself, because it has made clear that in the main, in  
15 all but the most narrow circumstances where a magistrate  
16 does find the existence of probable cause, the court  
17 need not engage in any searching inquiry to determine  
18 the qualified immunity is appropriate.

19 JUSTICE SCALIA: But the most narrow  
20 circumstance is defined as a circumstance in which no  
21 reasonable police officer could have thought the warrant  
22 was correct. Why don't we adopt a good faith test for  
23 this as we do in other -- in other --

24 MR. SRINIVASAN: Well, I think in some  
25 sense, Justice Scalia, you have two, in response, two



1 parts of your question. First of all in defining what  
2 is objectively unreasonable in this situation, the court  
3 has used some pretty strong language. In Malley it  
4 spoke in terms of a magistrate who is grossly  
5 incompetent. And in Leon it spoke of --

6 JUSTICE SCALIA: Policeman. Policeman.

7 MR. SRINIVASAN: No, it was speaking of a  
8 magistrate actually, not the officers. Because the  
9 point is that in order to find the officers are liable  
10 in this situation, the officers would have to be so sure  
11 that probably cause is lacking that only a grossly  
12 incompetent magistrate could sign off on the probably  
13 cause assessment. So it used gross incompetence with  
14 respect to the magistrate which illustrates the degree  
15 to which the standard is heightened in this context.

16 And in terms of whether the good faith  
17 principles come into play in the qualified immunity  
18 context, what the courts said in Malley is that the same  
19 standard of objective reasoning -- of reasonableness  
20 that governs in the good faith context for suppression  
21 purposes also governs in the qualified immunity context  
22 in 1983. And so I think there is room to import into  
23 the qualified immunity context these principles of good  
24 faith like for example, Mr. Chief Justice, the question  
25 of whether the officers in question asked superiors for

1     their assessment of whether there is probable cause.

2                     And in Sheppard, which was a suppression  
3     case, but in Sheppard at page 98 and 9 of the opinion  
4     the court specifically made reference to the fact that  
5     the officer in that case had asked for a probable  
6     cause --

7                     JUSTICE SCALIA: Well, I don't like this  
8     mishmash. Look, it's either good faith or it's --  
9     however good his faith was, however well he showed his  
10    good faith by checking with his superiors or what not,  
11    if he -- if he made an incompetent decision it's  
12    incompetent. And we should not mix the two, it seems to  
13    me.

14                    MR. SRINIVASAN: Well that, I mean certainly  
15    I don't want to urge anything upon the Court that would  
16    tend to water down the standard in the suppression  
17    context, but the only point I would add to this,  
18    Justice Scalia, is that when you are looking at it from  
19    the perspective of a reasonable officer who is trying to  
20    assess whether he should go forward and ask for  
21    assessment of probable cause from the magistrate, one  
22    consideration that seems natural to take into account is  
23    what actions the officer has taken, not just the quantum  
24    of proof that the officer has put in the affidavit but  
25    what actions has he taken. Has he asked for --

1 JUSTICE SCALIA: That would be wonderful if  
2 the test was, was this -- did this officer know that  
3 this was a bad affidavit and was acting in bad faith in  
4 executing it? If that was the test, then indeed the  
5 fact that he had checked with his superiors and all that  
6 good stuff would have some relevance.

7 MR. SRINIVASAN: The test as outlined by the  
8 Court in Malley is whether it's subjectively reasonable  
9 for the officer to rely on the magistrate's judgment of  
10 probable cause.

11 JUSTICE GINSBURG: Was the test was so  
12 lacking in indicia of probable cause as to render  
13 official belief in its existence unreasonable?

14 MR. SRINIVASAN: It's -- the Court did say  
15 that, Your Honor, and the Court put the formulation in a  
16 number of respects in Malley itself. It said, "We hold  
17 that" -- and this is at page 344: "We hold that the  
18 same standard of objective reasonableness that we  
19 applied in the context of the suppression hearing in  
20 Leon defines the qualified immunity accorded an officer  
21 whose request for a warrant allegedly caused an  
22 unconstitutional arrest."

23 And I think that's where the Court then goes  
24 on and articulates what Your Honor just quoted. But  
25 then the Court later says: "In Leon" -- and this is at

1 page, this is at page 345: In Leon we stated that our  
2 objective faith" -- "good faith inquiry is confined to  
3 the objectively ascertainable question of whether a  
4 reasonable well-trained officer would have known that  
5 the search was illegal despite the magistrate's  
6 authorization. The analogous question in this case,"  
7 and it goes on to speak about the analogy question.

8 JUSTICE KAGAN: I think the question,  
9 Mr. Srinivasan, is do you think that the current test,  
10 the test that's currently formulated, is sufficiently  
11 protective of police officers? Or do you think that we  
12 need to change the test in order to give police officers  
13 the protection they need?

14 MR. SRINIVASAN: We think if the current  
15 test is applied properly, it's sufficiently protective.  
16 And really the question is how it's applied. And in  
17 this case it was applied in a way that I think is not  
18 sufficiently protective.

19 JUSTICE SCALIA: Of course, you could say  
20 that in any test, you know? If you apply it  
21 protectively it will protect.

22 MR. SRINIVASAN: You could --

23 JUSTICE SCALIA: And if you don't apply it  
24 protectively, it won't protect. I like a test that, you  
25 know, that protects when it ought to and doesn't protect

1 when it ought not.

2 CHIEF JUSTICE ROBERTS: Did you say apply  
3 protectively or correctly?

4 MR. SRINIVASAN: Applied -- Well, I meant  
5 to say applied correctly, if applied correctly. I  
6 apologize if I misspoke. If applied correctly, it  
7 should sufficiently protect --

8 JUSTICE KENNEDY: In the background of this  
9 case is this question. A suspect has a weapon. He  
10 flees. As a general rule, do you think that warrants  
11 can say that when they search the home or the place  
12 where this person is likely to be, they can seize all  
13 weapons? Is this the general rule? .

14 MR. SRINIVASAN: No -- not -- not  
15 necessarily the general rule, Justice Kennedy. It has  
16 to be context specific. Here you had a lot more than  
17 that. You had an individual who had perpetrated an  
18 attempted murder, who was a known member of a violent  
19 gang, who had -- who had perpetrated physical assaults  
20 against this victim before, and who had directly  
21 threatened the victim that he would murder her if she  
22 ever went to the police, and that he was going to kill  
23 her.

24 JUSTICE SOTOMAYOR: You keep adding  
25 facts that weren't in --

1 JUSTICE KENNEDY: So the test is whether or  
2 not he is likely to commit another crime?

3 MR. SRINIVASAN: Well that's the test  
4 that --

5 JUSTICE KENNEDY: I mean, I thought the  
6 Petitioner said -- I didn't have the time to  
7 interrupt -- that under California law they can search  
8 for anything where he is likely to commit another crime.

9 MR. SRINIVASAN: Yes, this is a very  
10 important point, Justice Kennedy. At page 48 of the  
11 joint appendix, the language of the relevant California  
12 statute is set forth. The California provision is  
13 section 1524(a)(3) of the California Penal Code, and it  
14 authorizes a search for and seizure of items where they  
15 are possessed by a person with intent to use them as a  
16 means of committing a public offense. And that's the  
17 provision that was invoked this very warrant. And  
18 these -- and that's --

19 CHIEF JUSTICE ROBERTS: Finish your  
20 sentence.

21 MR. SRINIVASAN: That provision is by no  
22 means an outlier. It's in Federal Rule of Criminal  
23 Procedure 41(c)(3) and it's in the Model Penal Code of  
24 Pre-Arrestment Procedure at section 210.3, subsection  
25 (1)(c).

1 Thank you.

2 CHIEF JUSTICE ROBERTS: Thank you, counsel.

3 Mr. Wolfson.

4 ORAL ARGUMENT OF PAUL R.Q. WOLFSON

5 ON BEHALF OF THE RESPONDENTS

6 MR. WOLFSON: Thank you, Mr. Chief Justice,  
7 and may it please the Court:

8 In Malley v. Briggs, this Court ruled that  
9 police officers do not have immunity for seeking a  
10 search warrant when the warrant application is so  
11 lacking in indicia of probable cause as to render  
12 official belief in its existence unreasonable.

13 CHIEF JUSTICE ROBERTS: Malley involved a  
14 search warrant based solely on a wiretap in which an  
15 unknown individual discussed drug use at a party. That  
16 was all. It seems to me there's a lot more information  
17 here.

18 MR. WOLFSON: Well, Malley involved a  
19 mistake as to who the person under suspicion was who was  
20 mentioned in the -- in the wiretap. But the argument  
21 was made in Malley that is exactly the argument that is  
22 made here, which is that the police -- it -- one wants  
23 to encourage the police to seek warrants from the  
24 magistrates, and it would be -- and it would be, it  
25 would be undesirable if the police were not given

1 effectively absolute immunity when they seek a warrant  
2 from a magistrate, except of course when they -- when  
3 they lie, which is a separate question.

4 CHIEF JUSTICE ROBERTS: Here you had a  
5 police officer who assembled information he had,  
6 truthful information, in the affidavit, submitted it to  
7 his superiors, who were lawyers. Then it was submitted  
8 to the magistrate, who was a judge. And what you have  
9 to say, it seems to me, is that a reasonably competent  
10 officer -- not objective good faith or anything like  
11 that -- a reasonably competent officer would say: You  
12 know, I know the lawyers in the office said this was  
13 okay and I know the judge said it was okay, but I know  
14 more than them; I know not only that it's not okay, but  
15 it's so clearly not okay that I shouldn't have qualified  
16 immunity. That seems to me a pretty heavy burden to put  
17 on -- to put on the cop on the beat.

18 MR. WOLFSON: Mr. Chief Justice, I don't  
19 think -- I don't think there is any question that in the  
20 great majority of cases officers who seek warrants from  
21 magistrates will be immune. And the Court made clear in  
22 Malley that it does happen that officers make mistakes,  
23 good faith mistakes as to whether a particular set of  
24 facts amounts to probable cause, and in that context  
25 when there is a good faith mistake the officers will



1 have immunity.

2 But the Court also stressed that officers  
3 must minimize the risk of Fourth Amendment violations by  
4 exercising reasonable professional judgment in applying  
5 for search warrants. And so the Court ruled that an  
6 officer will not be immune if a "reasonably well trained  
7 officer," which is the term the Court used, would not  
8 have believed that the warrant affidavit established  
9 probable cause.

10 JUSTICE ALITO: Is it the case here that a  
11 reasonably well trained officer would not -- would  
12 understand that this warrant was defective in  
13 authorizing a search for guns other than the shotgun in  
14 question when a provision of the California Penal Code  
15 says that a search warrant may be issued to seize items  
16 intended for use in committing a crime?

17 MR. WOLFSON: A reasonable -- that a  
18 reasonably well trained officer would not have sought  
19 the search warrant. I don't think the California Penal  
20 Code provision really adds anything to the rest of the  
21 case, because it says that you may seek items that are  
22 intended to be used in a crime, but you still have to  
23 know, you still have to have probable cause to believe  
24 that there are such items. And so the cases where --

25 JUSTICE ALITO: You have your client who has

1 discharged a sawed-off shotgun at his former girlfriend  
2 in an attempt to kill her. And he is known to be a  
3 member of a violent gang, and he has threatened to kill  
4 her, and so a reasonable police officer would -- could  
5 not think, well, he might have some other guns and he --  
6 and there would be an intent to use those in the  
7 commission of the crime that he has threatened to  
8 commit.

9 MR. WOLFSON: Well, Mr. Bowen is not our  
10 client, Justice Alito. Mr. Bowen --

11 JUSTICE ALITO: I'm sorry. Excuse me. Mr.  
12 Bowen --

13 MR. WOLFSON: No, but this is an important  
14 point. Our clients are the innocent family that lives  
15 in the house where--

16 JUSTICE ALITO: Well, that was just -- that  
17 was a misstatement on my part.

18 MR. WOLFSON: No, I understand, but --

19 JUSTICE ALITO: He could not think that  
20 about Mr. Bowen?

21 MR. WOLFSON: But I want to make the point,  
22 not only do the police have to have probable cause to  
23 believe that there is such an item, they also have to  
24 have probable cause to believe that it will be found in  
25 the place that they propose to search. I mean, probable

1     cause --

2                   JUSTICE ALITO: All right. It was found  
3     that there was probable cause to believe that he was  
4     living in these premises, isn't that correct? And  
5     you're not contesting that.

6                   MR. WOLFSON: Well, we are contesting that.  
7     We're contesting that --

8                   JUSTICE ALITO: It's not an issue before us.

9                   MR. WOLFSON: It's not an issue here. The  
10    Ninth Circuit decided the case on the assumption that  
11    there was probable cause to believe that Mr. Bowen would  
12    be found --

13                  JUSTICE ALITO: Well, on the assumption that  
14    he was living in those premises, then what is wrong with  
15    a reasonable officer thinking: He's tried to kill her  
16    in the past using one gun; he's a member of a gang; he  
17    is very likely to have -- to possess or have access to  
18    other guns; those other guns may be found in the home  
19    where we believe he is living, and he is intending to  
20    use them to carry out the threat that he has promised,  
21    the threat that he has made?

22                  MR. WOLFSON: Well, there are several -- I  
23    think there are several problems with that. The first  
24    problem is the police don't have probable cause to  
25    believe that he has another gun, and they don't -- and

1     they certainly don't have probable cause to believe that  
2     any other such gun would be found at the Millenders'  
3     house and I -- the Millenders' house where innocent  
4     people live.

5                     Now -- And it's not just that no other such  
6     gun would be found at the Millenders' or the Millenders  
7     themselves had right to possess handguns for lawful  
8     purposes of self defense. So it's possible, of course  
9     it is possible to speculate about the things that the  
10    police might --

11                    JUSTICE KENNEDY: Well, just suppose they  
12    are searching the suspect's own house.

13                    MR. WOLFSON: Correct.

14                    JUSTICE KENNEDY: And there's -- he's used a  
15    specific gun. A 12-gauge Remington shotgun, and they  
16    are looking for that. And these facts are the same. He  
17    made -- continued to elude the police and may attack  
18    again. And they are searching the house, his own house.  
19    They see the one gun. They see a second gun. They  
20    cannot take the gun, the second gun?

21                    MR. WOLFSON: No, I would not -- I would not  
22    say that, Justice Kennedy because I think that --

23                    JUSTICE KENNEDY: On what basis do you say  
24    they can take the second gun?

25                    MR. WOLFSON: Because if the police are in a

1 place where, lawfully in a place pursuant to a properly,  
2 narrowly drawn warrant, and they -- and they see  
3 something in plain view, under this Court's plain view  
4 doctrine as articulated in Horton v. California, and  
5 there is probable cause to see something there to  
6 associate with criminal activity, yes, the police can --  
7 can seize that.

8 But it's -- but there is a big difference  
9 between thinking about what the police can do if they  
10 enter someplace lawfully, and how they can react --

11 JUSTICE BREYER: Yes, but what's the  
12 difference between what you just said and the situation  
13 here? You say, if he sees the gun next to the bed, for  
14 example, or in the closet, and he's in the house looking  
15 for the sawed-off shotgun, he could seize it. He can't  
16 unless he has probable cause to think it might be used  
17 for a crime.

18 MR. WOLFSON: Yes, but --

19 JUSTICE BREYER: And -- so how did that  
20 change? How did that change suddenly because he  
21 happened to see in the house something in the closet,  
22 and nothing else changed? Why now suddenly can he take  
23 it?

24 MR. WOLFSON: I think the assumption, as I  
25 understood, behind Justice Kennedy's question was, if

1 the police see something -- happen to see something in  
2 the house that is probable cause of a crime --

3 JUSTICE BREYER: But your argument is there  
4 was no probable cause for thinking that the guns in the  
5 house, if there were other guns, would be used for a  
6 crime. Now, your opponent, your brother there, said  
7 when I suggested that: Oh, no, that's wrong; there is  
8 probable cause to think that any guns in the house would  
9 be used for a crime. He hasn't killed the girl yet, and  
10 one gun's as good as another. And he might well take  
11 one of those other guns and kill her. So there's  
12 probable cause to believe that the guns that are in the  
13 house, or at least one could reasonably think so, would  
14 be used for a crime. That was his response.

15 Then, as to whether they are likely to be in  
16 the house, well, we know this: we know he has a  
17 sawed-off shotgun, and we know he is a member of a gang,  
18 which is defined as a group of people engaged in  
19 definable criminal activity, creating an atmosphere of  
20 fear and intimidation.

21 So people like that have guns. And when --  
22 where they live, there may well be other guns. So it is  
23 reasonable for me to think there are other guns in the  
24 house and reasonable for me to think that other guns in  
25 the house would be used for killing this girl if he can

1 get to her. Okay, that's the argument.

2 Now, what's the response?

3 MR. WOLFSON: Well --

4 JUSTICE BREYER: And you don't have to --  
5 you have to show more than that there is no probable  
6 cause. You have to show it wasn't reasonable to think  
7 that there was probable cause.

8 MR. WOLFSON: Because the police did not  
9 have probable cause to believe there was any other gun,  
10 and they certainly --

11 JUSTICE BREYER: He is a member of a gang  
12 which often has guns, and this expert knows that members  
13 of gangs have guns. And the definition of gang suggests  
14 they are likely to have guns, whether it's illegal to  
15 have them or not illegal.

16 That's how he knows that that's --

17 MR. WOLFSON: But it doesn't -- excuse me.  
18 It doesn't necessarily follow that there is probable  
19 cause to believe that he has an arsenal of weapons with  
20 him in an innocent third party's house.

21 JUSTICE SCALIA: And the warrant authorized  
22 the search for and seizure of all guns, not just the  
23 guns belonging to Bowen. And in --

24 MR. WOLFSON: That's correct.

25 JUSTICE SCALIA: -- in fact, they seized

1 some of the Millenders' guns, didn't they?

2 MR. WOLFSON: That is correct.

3 JUSTICE SCALIA: And why is it -- if there  
4 is probable cause to believe that he has other guns, is  
5 there also probable cause to believe that any gun found  
6 in the house will belong to him? I think not.

7 MR. WOLFSON: I would say not, Your Honor,  
8 but I --

9 CHIEF JUSTICE ROBERTS: We have been  
10 talking -- we have been talking about this for some time  
11 as if we are reviewing the adequacy of the warrant. We  
12 are not. We are reviewing the reasonableness of these  
13 officers' determination that there was probable cause.

14 Do you think it is at all pertinent in  
15 addressing that question that the officers submitted the  
16 affidavit to support the warrant to Deputy District  
17 Attorney Jane Wilson, who reviewed it and signed off on  
18 it?

19 MR. WOLFSON: I -- I think it can't be  
20 dispositive, Your Honor.

21 CHIEF JUSTICE ROBERTS: I didn't ask if it's  
22 dispositive. Is it relevant in any way?

23 MR. WOLFSON: It could be -- it could be  
24 relevant, but I would say it -- it doesn't make the case  
25 in this case, for a few reasons. First of all,



1 generally speaking, of course, if you can't rely on the  
2 magistrate as a -- you know, as a blanket rule that you  
3 are not immune, it's hard to understand why the fact  
4 that the deputy district attorney signed off on it would  
5 have essentially the same effect that the Court rejected  
6 in Malley, when it said, you know, there will be a  
7 limited set of circumstances where even if -- even if a  
8 magistrate issues a warrant, the officer will be liable.

9           So I don't think -- I mean, the district  
10 attorney and the superior are on the same crime-fighting  
11 team as the -- as the -- as Detective Messerschmidt in  
12 this case.

13           Also, we really -- we have no information  
14 about what transpired in these conversations with the  
15 deputy district attorney. We don't know whether the  
16 D.A. said to Detective Messerschmidt: Oh, you know,  
17 you're good, this is totally fine, or whether she said,  
18 you know, you're pushing the envelope here, but we might  
19 just find a magistrate who will go along with it, so --  
20 you know, so see what you can get.

21           And the other point is, of course, relying  
22 on your superiors and on the D.A. is a double-edged  
23 sword in many cases, because that -- in fact, that can  
24 establish or go a long way towards establishing Monell  
25 liability, if you establish that there's a pattern of

1       superiors and of deputy district attorneys --

2                   CHIEF JUSTICE ROBERTS:   Do you want -- do  
3       you want to encourage officers, when they are applying  
4       for search warrants, to have them reviewed by the deputy  
5       district attorney or not?

6                   MR. WOLFSON:   Certainly we want them to  
7       encourage that, Mr. Chief Justice.   But the point is, in  
8       Malley, this Court made clear that ultimately, a  
9       reasonably -- a reasonably well-trained officer must  
10      make a judgment himself as to whether the course of  
11      conduct that he proposes to undertake could reasonably  
12      be thought to be within the law.

13                  JUSTICE SCALIA:   Ultimately, it's the  
14      officer who goes into the Millenders' house, seizes  
15      their arms, rifles through their drawers.   It's -- it's  
16      the officer that does that?

17                  MR. WOLFSON:   Well, the officers who are the  
18      Petitioners in this case are the officers who actually  
19      applied for the search warrant and who actually drafted  
20      the search warrant for the magistrate to sign.   Now,  
21      they then were present at the search.   I think there is  
22      a --

23                  JUSTICE SCALIA:   I didn't understand that.

24                  MR. WOLFSON:   Yes.

25                  JUSTICE SCALIA:   They did not execute the

1 warrant?

2 MR. WOLFSON: They were -- they were -- they  
3 were part of the executing team, yes. They were --

4 CHIEF JUSTICE ROBERTS: But did they enter  
5 the residence?

6 MR. WOLFSON: They entered the residence,  
7 yes. There were other officers who I think it would be  
8 fair to say kind of more -- undertook the more-concrete  
9 search of the -- you know, of the house from top to  
10 bottom. I think there is a different question about  
11 when a line officer relies on his lead officer's  
12 instructions. And that was actually discussed by the  
13 Ninth Circuit in -- in the Groh case which later came up  
14 to -- came up to this Court.

15 But I think the -- the standard that the  
16 Court set forth in Malley, the objective reasonableness  
17 standard, is really -- is consistent with this Court's  
18 qualified immunity case law.

19 JUSTICE BREYER: If we are using a purely  
20 objective standard, another fact that I just want your  
21 reaction on is where he says: "I told you never to call  
22 the cops on me." Now, he has tried to throw her out of  
23 the window or something, he -- he's shot at her, he's  
24 tried to kill her in five different ways, and he's  
25 shouting: I am going to kill you and I told you never

1 to call the cops on me.

2 When I first read that I thought, well,  
3 maybe he has something -- maybe this is explained in  
4 part not just domestic, but he has something to hide.  
5 He's afraid she's going to tell the police something.  
6 Now -- now, could a person reasonably read those words  
7 and think he has something to hide here? His -- and  
8 there's something going on and it's not just domestic?

9 Where does that lead us if we --

10 MR. WOLFSON: I don't really --

11 JUSTICE BREYER: Can we read it that way?

12 And if we do read it that way, where does that lead you?

13 MR. WOLFSON: Well, the Petitioners have  
14 never suggested that reading before. And indeed, the  
15 Petitioners have -- indeed, Detective Messerschmidt  
16 testified at his deposition, no, I didn't have any  
17 reason to believe that the crime was gang-related.

18 I mean, one of the curious things about  
19 the -- the argument that the Petitioners are now making,  
20 which is that you can go outside the warrant and import  
21 into it the fact that he was a felon, one of the curious  
22 things about that is that the -- is that the officers  
23 told the magistrate this is a violent crime, no  
24 question, he is a gang member -- not in support of  
25 probable cause, but in support of night service. They

1 told the magistrate that they had reviewed all the  
2 various government databases, specifically including  
3 police databases, but did not tell the magistrate that  
4 he had any criminal record at all. But that's so --

5 JUSTICE GINSBURG: Mr. Wolfson, suppose they  
6 had had a warrant to search just for the sawed-off  
7 shotgun. You conceded that when they go into the house  
8 and they are looking all over, they could look in  
9 cabinets and drawers to find pieces of the shotgun.  
10 They come across other guns, they can at least secure --  
11 take those guns for their own safety. There are other  
12 people in the house and somebody might use them.

13 So what's -- what's the difference in the  
14 scope of the search if they have a warrant just to look  
15 for the sawed-off shotgun or if they have a warrant that  
16 covers any guns?

17 MR. WOLFSON: Well, a couple of responses.  
18 First of all, I think this Court's decisions in Groh and  
19 other courts made clear that when you are evaluating  
20 whether -- whether the Respondents were harmed by this  
21 violation of their constitutional rights, you have to  
22 look at the warrant that was actually applied for and  
23 executed, not -- you don't -- you don't compare it to a  
24 hypothetical warrant that the police might have gotten  
25 if they had applied for a properly limited warrant.

1 CHIEF JUSTICE ROBERTS: You cite -- well, in  
2 Groh, the warrant did not identify the items to be  
3 seized at all.

4 MR. WOLFSON: That is correct. But the  
5 argument was made in Groh was, well, there really was no  
6 harm because surely the officers had probable cause, and  
7 if they had done their work right, there was I think no  
8 question that they would have gotten a warrant.

9 CHIEF JUSTICE ROBERTS: Your answer, and  
10 again --

11 MR. WOLFSON: Right. Right.

12 CHIEF JUSTICE ROBERTS: -- it seems to me we  
13 keep separating these two inquiries. It's not whether  
14 the warrant showed adequate probable cause; it's whether  
15 or not the officers were reasonable in believing that it  
16 did.

17 MR. WOLFSON: I understand --

18 CHIEF JUSTICE ROBERTS: And to cite Groh,  
19 a -- no reasonable officer could think that a warrant  
20 that doesn't say anything at all about what is to be  
21 seized complied with the Fourth Amendment.

22 MR. WOLFSON: But the argument was made in  
23 Groh that essentially this was sort of no harm, no foul,  
24 because surely a reasonable police officer could have  
25 obtained a valid warrant. And I was -- I was sort of

1 analogizing that to the question that Justice Ginsburg  
2 made. I don't think that really is a question of  
3 qualified immunity at all. I think that may be a  
4 question of damages as to whether you could think oh,  
5 well, perhaps the police might have gotten a valid  
6 warrant and so forth. But -- so I think, sure, it's  
7 possible to imagine that the police could have gotten a  
8 valid, narrow warrant limited to -- limited to search  
9 for the sawed-off shotgun, and -- and certainly not the  
10 gang-related activity, but they didn't. And one has  
11 to -- one has to measure the harm that the -- that the  
12 Millenders suffered by execution of this --

13 JUSTICE SOTOMAYOR: So what happens --

14 MR. WOLFSON: -- invalid warrant.

15 JUSTICE SOTOMAYOR: -- below on that  
16 question? Following up on --

17 MR. WOLFSON: Right.

18 JUSTICE SOTOMAYOR: -- the same question  
19 that Justice Kagan asked of your brethren, which is how  
20 about we find that it was reasonable to ask for the guns  
21 but not for the gang-related materials? What does that  
22 do with your claim, and do you disagree with the manner  
23 in which he described what the inquiry would be below,  
24 or before us now?

25 MR. WOLFSON: Right. We do disagree. We

1 would submit that the -- that it's still -- that it's  
2 still invalid. But this is an issue that the courts of  
3 appeals have wrestled with under what is called the  
4 severance doctrine, which mostly is applied in  
5 exclusionary rule cases, not in qualified immunity  
6 cases.

7           This Court has actually never explicitly  
8 endorsed the severance doctrine, and that is the  
9 question that suppose you have a warrant that is sort of  
10 half valid and half invalid; or maybe half arguably  
11 valid but half totally, you know, totally valid. What  
12 do you do then? And the -- I think at a minimum the  
13 record would not permit this Court to -- to resolve that  
14 because we don't know from the record before us sort of  
15 what part of the search was conducted under what part of  
16 the -- of the warrant.

17           JUSTICE ALITO: What about the gang  
18 paraphernalia? Why couldn't an officer reasonably  
19 believe that there was a probable cause to seize that --  
20 to search for and seize that, because it would link Mr.  
21 Bowen with this residence where they hoped to find the  
22 shotgun? And you dispute the fact that he is -- that he  
23 is associated with that residence.

24           MR. WOLFSON: Right. So Justice Alito,  
25 there are certainly are circumstances in which it is



1 legitimate to seek for information that links a  
2 particular person to a particular location for purposes  
3 of establishing criminal liability. The -- you know,  
4 there are many cases, for example, where police come  
5 across a meth lab or something like that, and of course  
6 in that situation the police have a legitimate reason  
7 to -- to want to know who is present, whose fingerprints  
8 are all over the place, because that would tend to  
9 establish that the person is -- is in unlawful  
10 possession of methamphetamine.

11 JUSTICE ALITO: Then why couldn't a  
12 reasonable officer think that that would be the case  
13 here.

14 MR. WOLFSON: For -- for a few reasons.  
15 First of all, the 120th Street address, the Millenders'  
16 house, is totally irrelevant to the actual crime under  
17 investigation which took -- someplace else. I mean it's  
18 just a happenstance that the -- that the police are  
19 searching -- searching this place. It's not the place;  
20 this is not a tavern or a still or --

21 JUSTICE ALITO: No, well, if they have  
22 probable cause to believe that the sawed-off shotgun is  
23 there; let's suppose they find the sawed-off shotgun.  
24 Then there's going to be an issue at trial: was it his  
25 sawed-off shotgun? And anything that links him to that

1 residence is valuable evidence.

2 MR. WOLFSON: But the gang-related indicia  
3 part of the warrant is -- first of all, much, much  
4 broader than that; and secondly the Petitioners have  
5 never argued until this Court that that was the purpose  
6 of the gang-related indicia part of the warrant. I  
7 mean, the Petitioners argued that the gang-related  
8 indicia part of the warrant is intended to establish  
9 his -- his gang membership. And -- because for example,  
10 there might be a -- an increase in penalty if something  
11 is a gang-related crime. Even --

12 JUSTICE ALITO: I thought this was a test of  
13 what they could -- what a reasonable officer could have  
14 believed, not what they in particular believed.

15 MR. WOLFSON: Well, that's correct, but I  
16 think that does not mean that one can engage essentially  
17 in a completely post-hoc rationalization of what the  
18 objective search by the -- to be accomplished by the  
19 warrant is. I mean, the warrant application itself says  
20 this is a spousal assault that the police are  
21 investigating. There is no suggestion that it's a  
22 gang-related crime in any way.

23 JUSTICE KAGAN: Mr. Wolfson, it seems that  
24 many of the arguments on both sides are very  
25 fact-dependent in nature, that you are asking what

1 inferences can be drawn reasonably from certain facts,  
2 from a particularly violent incident, from the use of a  
3 sawed-off shotgun, from the fact that this was not his  
4 home, from the fact that he was a gang member; and yet  
5 the cases that you cite to us as suggesting what a  
6 reasonable police officer should know, really are not  
7 cases that involve these facts at all.

8               They are cases that state very broad general  
9 propositions about Fourth Amendment law. So how can you  
10 get from those cases to what you are saying a particular  
11 police officer in a particular set of circumstances  
12 ought to know?

13              MR. WOLFSON: Well, of course this Court has  
14 never required that, for qualified immunity purposes,  
15 that the case -- there be another case exactly on point.

16              JUSTICE KAGAN: But -- no. But there seems  
17 to be a very large gap between what this police officer  
18 has to think about and the cases that you cite.

19              MR. WOLFSON: Respectfully, Justice Kagan, I  
20 don't think I agree, and I think that it's -- it's  
21 useful to look at two related but somewhat different  
22 lines of cases, particularly in the Ninth Circuit, but  
23 actually, you know, all across the board in the courts  
24 of appeals. The first line of cases says if the police  
25 have reason, or have probable cause to look for a

1 specific object, or specific -- even a specific kind of  
2 object, that doesn't give them probable cause to look  
3 for the whole generic class of objects that are somewhat  
4 similar.

5           The leading case on this in the Ninth  
6 Circuit is the Spilotro decision, but there are many  
7 cases coming both before and after that stand for that  
8 proposition. The -- the principle has been applied in  
9 many contexts. For example, if you think somebody is  
10 committing fraud for years 1998 and 1999, and there are  
11 billing records, you can't -- you don't have probable  
12 cause to look for fraud, you know, for the entire  
13 records, billing records from 1950 to the present. If  
14 you think that -- if you see somebody run over somebody  
15 else in a green Nissan Sentra, you don't have probable  
16 cause to search for all vehicles including a red Ford --  
17 a red Ford Explorer.

18           This is really that principle in the context  
19 of firearms. And it -- and Detective Messerschmidt had  
20 the information that the case involved a black sawed-off  
21 shotgun with a pistol grip. Now there certainly are  
22 cases --

23           JUSTICE ALITO: Well, to come back to a  
24 question that was asked before --

25           MR. WOLFSON: Yes.

1 JUSTICE ALITO: -- suppose they were  
2 issuing -- suppose the warrant just sought this --  
3 the -- that particular weapon. They execute it, and  
4 they come to a room in this house and it's got Mr.  
5 Bowen's name on it, and inside there is a gun cabinet  
6 and there are -- there's -- there are a whole -- there  
7 is a whole array of guns, legal -- let's say he legally  
8 possesses them. There's a -- there's a -- there are  
9 assault rifles, there are pistols; and it's known that  
10 he's threatened to kill his girlfriend. You say --  
11 would the police be able to seize those?

12 MR. WOLFSON: Yes, I think there are many  
13 things the police can do. First of all, an assault  
14 rifle is illegal, so that per se is contraband --

15 JUSTICE ALITO: All right. All sorts of  
16 legal weapons --

17 MR. WOLFSON: Right. Okay.

18 JUSTICE ALITO: -- that could be used.  
19 Could they -- could they seize those?

20 MR. WOLFSON: Well, the police -- if -- and  
21 so one question is do the police know that Mr. Bowen is  
22 a felon? And here I think that is relevant, because  
23 they are dealing with what not what is in the affidavit,  
24 but to on-the-spot judgments. So if the police --

25 JUSTICE ALITO: Let's --

1 MR. WOLFSON: So -- okay.

2 JUSTICE ALITO: -- I am hypothesizing --

3 MR. WOLFSON: Right.

4 JUSTICE ALITO: -- he has a license for all  
5 of these. He's not --

6 MR. WOLFSON: Right. So I think there  
7 are -- I think if the police have probable cause, in  
8 light of the circumstances that they actually encounter  
9 at the house, that the guns --

10 JUSTICE ALITO: The circumstances are  
11 exactly the circumstances here --

12 MR. WOLFSON: That the --

13 JUSTICE ALITO: -- except for the two things  
14 that I changed. It's his room, and it's his gun  
15 cabinet.

16 MR. WOLFSON: The police may be able to  
17 secure all of those weapons, certainly so that they pose  
18 no danger to anybody else; and if Mr. Bowen is arrested  
19 and then, if -- if he is to be released on bail or on  
20 pretrial release, it's a very common condition that he  
21 not have access to any weapons. The police -- it may be  
22 required that he deposit those weapons with somebody  
23 else who, you know, is a proper custodian --

24 JUSTICE ALITO: What happens if they don't  
25 find him? He is still at large. They have to leave the

1 weapons there?

2 MR. WOLFSON: I don't think they --  
3 necessarily have to leave the weapons there.

4 JUSTICE ALITO: -- why? On what grounds  
5 could they seize them?

6 MR. WOLFSON: If there is no -- well, if he  
7 not, if he is not there, then it is not clear to me that  
8 he has a Fourth Amendment standing to challenge  
9 anything.

10 JUSTICE ALITO: It's his room.

11 MR. WOLFSON: It's his room. But if he's --  
12 I mean, but if he's --- if they really believe that the  
13 police, that he is there, that it is his house, there is  
14 no reason to believe that his possession of any of these  
15 weapons is illegal, there are -- the police can do  
16 things to secure --

17 JUSTICE KENNEDY: I am putting in my notes  
18 that you are not answering the hypothetical.

19 MR. WOLFSON: Right.

20 (Laughter.)

21 MR. WOLFSON: I think there -- I'm not sure.  
22 I don't think the police can say these weapons are just  
23 ours, we are going to take them, we can seize them  
24 without -- without probable -- without more probable  
25 cause.

1 JUSTICE ALITO: They can't say we are going  
2 to take them under -- we're going to take them so that  
3 he can't use those to kill his girlfriend which is what  
4 he has threatened to do? They just have to leave them  
5 there --

6 MR. WOLFSON: No --

7 JUSTICE ALITO: -- and if he happens to come  
8 back and -- and get those weapons, and he kills her,  
9 well, that's just too bad?

10 MR. WOLFSON: But if the police -- the  
11 police have -- if the police have probable cause to  
12 believe the he -- on the spot that he will use that  
13 weapons, yes, they can seize them under that provision  
14 of the California Penal Code, but that does not mean  
15 they have probable cause when they apply for the -- the  
16 warrant, to think that those weapons either will --

17 JUSTICE ALITO: You really -- you really are  
18 not answering my question.

19 MR. WOLFSON: Yes. I --

20 JUSTICE ALITO: My question is: everything  
21 is exactly the same except that it's his room and he's  
22 not a felon and he possesses them legally and there they  
23 are and they see them.

24 MR. WOLFSON: I think --

25 JUSTICE ALITO: And your answer is they can



1 take them; in which case my question is, why wouldn't  
2 they have probable cause to search for those in the  
3 first place? Or they can't take them, in which case I  
4 say well, what about the possibility that he will come  
5 back, get those weapons and carry out his threat using  
6 those weapons?

7 MR. WOLFSON: They could -- they may be able  
8 to take them but that does not mean that they knew that  
9 they existed in the first place or that they would be at  
10 the Millenders' house. That's -- that I think is the  
11 fundamental difference.

12 JUSTICE GINSBURG: What happened here when  
13 they -- they -- they did seize weapons that belonged to  
14 the plaintiff, Mrs. Millender? They -- they took them  
15 because they thought they were the defendant's? Not  
16 that -- they thought they were Bowen's?

17 MR. WOLFSON: It's not clear, Justice  
18 Ginsburg. They took them under the authority of the  
19 warrant. They did not provide an explanation as to  
20 specifically why they were -- why the gun was seized,  
21 but the gun was seized. And this -- I think that's  
22 really the -- this point, that they went into the  
23 Millenders' house, searched the house from top to  
24 bottom, and seized the Millenders' -- Mrs. Millender's  
25 lawfully owned weapon really shows that this case is in

1 the heartland of what the Fourth Amendment is concerned  
2 about. I mean, this is exactly the kind of case that  
3 the Framers were concerned about when they abolished the  
4 general warrant. This is the sort of case --

5 CHIEF JUSTICE ROBERTS: Counsel -- do you --  
6 do you contend that anything in the affidavit was false?

7 MR. WOLFSON: Yes. False or at least -- or  
8 at least misleading.

9 CHIEF JUSTICE ROBERTS: What was that?

10 MR. WOLFSON: I think the -- the -- the  
11 proposition that Bowen quote, unquote "resided" at the  
12 120th Street address, and that that -- and that that  
13 conclusion was drawn from among other things, Detective  
14 Messerschmidt's search of government databases was  
15 material misleading, because he didn't reside there. He  
16 may have been staying -- hiding out there, and the  
17 search of the government databases which are actually --  
18 the results are actually reprinted --

19 CHIEF JUSTICE ROBERTS: Where did the -- may  
20 have been -- may have staying there.

21 MR. WOLFSON: That is what Shelley Kelly  
22 told Detective Messerschmidt which is, if I am not  
23 mistaken --

24 CHIEF JUSTICE ROBERTS: It was materially  
25 false, that they said he resides there, and what he knew

1 is that he may have been staying --

2 MR. WOLFSON: He may have been hiding out  
3 there. When -- especially when you combine that with  
4 all the other information that Detective Messerschmidt  
5 actually obtained from the printouts of the databases  
6 which are in the JA, which in fact say that he hadn't  
7 been at the 120th Street address for several months and  
8 his most recent address was 97th Street where he lived  
9 with -- where he stayed with, at least sometimes,  
10 Shelley Kelly and gave it out as his address. So  
11 that -- that is in respects why we think this is  
12 materially misleading. Of course, we were not allowed  
13 to appeal that determination. So that really only half  
14 of the case in that respect was before the court of  
15 appeals and is before this Court.

16 Thank you very much.

17 CHIEF JUSTICE ROBERTS: Thank you, counsel.

18 Mr. Coates, you have 2 minutes remaining.

19 REBUTTAL ARGUMENT OF TIMOTHY R. COATES

20 ON BEHALF OF THE PETITIONERS

21 MR. COATES: With respect to the -- the  
22 hypothetical that Justice Alito postulated in terms of  
23 finding other weapons there, and Respondents' counsel to  
24 say well, we might go on the plain view doctrine, I  
25 think these are circumstances in which we note that you

1 want to encourage officers when they can, not to -- not  
2 rely on exceptions to the warrant requirement, and here  
3 if anything the officers in an abundance of caution  
4 attempted to get a warrant, contemplating those precise  
5 circumstances. I don't think they should incur  
6 liability for -- for going to that extra step and that  
7 extra precaution.

8           And again, a step back from whether there is  
9 actually probable cause, but whether a reasonable  
10 officer could even believe that might be the case for  
11 purposes of sending it to a magistrate. I think under  
12 those circumstances you want to encourage officers to  
13 seek a magistrate's determination and not try and rely  
14 on on-the-scene exceptions to the warrant requirement to  
15 try and justify seizing weapons under those  
16 circumstances.

17           With respect to Justice Scalia's concern  
18 about the probable cause to seize all guns as opposed to  
19 guns belonging to Bowen, and I think the notion is that  
20 Bowen, being a resident and that being established for  
21 purposes of this contention at this point, it's still  
22 down at district court but it was assumed for purposes  
23 of the Ninth Circuit that he was a resident -- that as a  
24 resident that he would have access to that firearm, and  
25 I think this was bolstered by a fact, again his status

1 as a gang member, we cite the Chicago Housing  
2 Authority v. Rhodes case which talks about the manner in  
3 which gang members often store and use weapons at family  
4 members' homes.

5 I mean, it's an unfortunate part of -- of  
6 the gang culture, so it's not unreasonable for an  
7 officer to think there might be probable cause at the  
8 very least to seize any weapon found there, even if  
9 ultimately facts developed that it is in fact not  
10 Bowen's weapon. And this also goes to the indicia of  
11 gang membership and why it's reasonable even to ask,  
12 because that may be one of the means by which we could  
13 tie a particular weapon to Bowen depending upon what is  
14 found during the search.

15 This is a very high standard as established  
16 by this Court, which is essentially plainly incompetent  
17 or knowingly violating the law. And this is an officer  
18 that has not hidden the ball with respect to what  
19 transpired between Bowen and Kelly. He submitted it to  
20 his superiors to look at; he submitted it to an  
21 attorney; and while that is not dispositive, I think  
22 those are objective facts that a reasonable officer  
23 could say, I have done this, this and this; there is no  
24 reason for me to believe that I am violating the law in  
25 sending it to a magistrate.

1 CHIEF JUSTICE ROBERTS: Thank you, counsel,  
2 counsel.

3 The case is submitted.

4 (Whereupon, at 12:09 p.m., the case in the  
5 above-entitled matter was submitted.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

<b>A</b>				
<b>ability</b> 15:7	12:22 26:24	<b>apologize</b> 29:6	<b>articulates</b> 27:24	<b>authorization</b>
<b>able</b> 17:12 24:5	27:3 32:6 33:8	<b>appeal</b> 59:13	<b>ascertainable</b>	28:6
53:11 54:16	40:16 53:23	<b>appeals</b> 23:14	28:3	<b>authorize</b> 17:15
57:7	58:6	48:3 51:24	<b>asked</b> 7:12 13:22	<b>authorized</b> 39:21
<b>abolished</b> 58:3	<b>affidavits</b> 14:7	59:15	25:25 26:5,25	<b>authorizes</b> 30:14
<b>above-entitled</b>	<b>afraid</b> 44:5	<b>APPEARANC...</b>	47:19 52:24	<b>authorizing</b>
1:13 62:5	<b>agree</b> 6:9,9	1:16	<b>asking</b> 6:12	33:13
<b>absolute</b> 32:1	51:20	<b>appendix</b> 22:16	13:12 14:25	<b>a.m</b> 1:15 3:2
<b>absolutely</b> 8:9	<b>AL</b> 1:3,8	23:15 30:11	24:3 50:25	
17:24	<b>albums</b> 22:13	<b>application</b> 31:10	<b>aspect</b> 21:25	<b>B</b>
<b>abundance</b> 60:3	<b>Alito</b> 23:19,24	50:19	<b>aspects</b> 21:17	<b>back</b> 12:10 15:16
<b>access</b> 18:9	33:10,25 34:10	<b>applied</b> 27:19	22:7	15:16,22 17:1
35:17 54:21	34:11,16,19	28:15,16,17	<b>assault</b> 7:24 8:11	52:23 56:8 57:5
60:24	35:2,8,13 48:17	29:4,5,5,6	8:20,21 9:9,9	60:8
<b>accomplished</b>	48:24 49:11,21	42:19 45:22,25	11:14,15 17:7	<b>background</b> 29:8
50:18	50:12 52:23	48:4 52:8	50:20 53:9,13	<b>bad</b> 16:4 27:3,3
<b>accorded</b> 27:20	53:1,15,18,25	<b>apply</b> 4:6 28:20	<b>assaults</b> 29:19	56:9
<b>account</b> 13:5,14	54:2,4,10,13	28:23 29:2	<b>assembled</b> 32:5	<b>bail</b> 54:19
13:18,24 26:22	54:24 55:4,10	56:15	<b>assess</b> 26:20	<b>balance</b> 20:14
<b>acting</b> 27:3	56:1,7,17,20	<b>applying</b> 23:20	<b>assessment</b>	21:8
<b>actions</b> 4:3 26:23	56:25 59:22	33:4 42:3	25:13 26:1,21	<b>ball</b> 61:18
26:25	<b>allegedly</b> 27:21	<b>appointed</b> 23:25	<b>associate</b> 37:6	<b>bare-bone</b> 7:10
<b>activities</b> 9:15	<b>allow</b> 12:23 22:9	<b>appropriate</b>	<b>associated</b> 8:23	<b>bare-bones</b> 3:22
<b>activity</b> 8:20	<b>allowed</b> 59:12	24:18	23:12 48:23	4:8 7:5
19:22,23 37:6	<b>Amendment</b> 6:24	<b>appropriately</b>	<b>assume</b> 23:15	<b>based</b> 31:14
38:19 47:10	7:17 14:11 15:4	24:11	<b>assumed</b> 60:22	<b>basis</b> 36:23
<b>actual</b> 10:11	20:23 21:20,24	<b>arguably</b> 48:10	<b>assumption</b>	<b>beat</b> 32:17
49:16	24:2 33:3 46:21	<b>argued</b> 20:2 50:5	22:19 35:10,13	<b>bed</b> 37:13
<b>add</b> 26:17	51:9 55:8 58:1	50:7	37:24	<b>behalf</b> 1:18,23
<b>adding</b> 29:24	<b>amicus</b> 1:21 2:7	<b>arguing</b> 5:23	<b>atmosphere</b>	2:4,11,14 3:8
<b>additional</b> 5:13	20:18	<b>argument</b> 1:14	38:19	31:5 59:20
<b>address</b> 49:15	<b>amounts</b> 32:24	2:2,5,9,12 3:4,7	<b>atomic</b> 15:12	<b>belief</b> 27:13
58:12 59:7,8,10	<b>analogizing</b> 47:1	20:17 31:4,20	<b>attack</b> 17:9	31:12
<b>addressed</b> 4:19	<b>analogous</b> 28:6	31:21 38:3 39:1	36:17	<b>believe</b> 4:12,22
<b>addressing</b> 40:15	<b>analogy</b> 28:7	44:19 46:5,22	<b>attempt</b> 34:2	4:24 10:19
<b>adds</b> 33:20	<b>anchor</b> 23:7	59:19	<b>attempted</b> 24:13	14:22,23 15:2
<b>adequacy</b> 40:11	<b>Anderson</b> 8:18	<b>arguments</b> 50:24	29:18 60:4	15:13 17:11
<b>adequate</b> 46:14	<b>Angeles</b> 1:17	<b>arises</b> 4:5	<b>attorney</b> 40:17	23:23 33:23
<b>admission</b> 11:12	<b>answer</b> 7:14	<b>arms</b> 42:15	41:4,10,15 42:5	34:23,24 35:3
<b>admitted</b> 19:2	13:23,23 46:9	<b>array</b> 53:7	61:21	35:11,19,25
<b>adopt</b> 24:22	56:25	<b>arrest</b> 27:22	<b>attorneys</b> 4:17	36:1 38:12 39:9
<b>affidavit</b> 3:21 4:8	<b>answering</b> 11:2,3	<b>arrested</b> 54:18	20:6 42:1	39:19 40:4,5
4:9,16 5:18	55:18 56:18	<b>arsenal</b> 39:19	<b>Augusta</b> 1:7 12:5	44:17 48:19
7:10 12:14,16	<b>anybody</b> 54:18	<b>articles</b> 23:9	<b>authority</b> 57:18	49:22 55:12,14
	<b>anyway</b> 12:25	<b>articulated</b> 37:4	61:2	56:12 60:10

61:24 <b>believed</b> 14:16 33:8 50:14,14 <b>believing</b> 46:15 <b>belong</b> 12:24 40:6 <b>belonged</b> 57:13 <b>belonging</b> 39:23 60:19 <b>best</b> 16:3 <b>beyond</b> 5:5 8:7 21:8 <b>big</b> 37:8 <b>billing</b> 52:11,13 <b>bit</b> 6:16 <b>black</b> 52:20 <b>blanket</b> 41:2 <b>board</b> 51:23 <b>bolstered</b> 60:25 <b>bomb</b> 15:12 <b>bothers</b> 12:16 <b>bottom</b> 43:10 57:24 <b>Bowen</b> 9:21 17:25 34:9,10 34:12,20 35:11 39:23 48:21 53:21 54:18 58:11 60:19,20 61:13,19 <b>Bowen's</b> 53:5 57:16 61:10 <b>BRENDA</b> 1:6 <b>brethren</b> 47:19 <b>BREYER</b> 12:11 12:13 13:9,12 13:21 14:4,6,18 15:10 17:3 37:11,19 38:3 39:4,11 43:19 44:11 <b>Briggs</b> 3:11 31:8 <b>broad</b> 51:8 <b>broader</b> 50:4 <b>brother</b> 38:6	<b>brought</b> 20:7 <b>build</b> 10:6 <b>burden</b> 32:16 <hr/> <b>C</b> <hr/> <b>c</b> 2:1 3:1 30:25 <b>cabinet</b> 53:5 54:15 <b>cabinets</b> 45:9 <b>caliber</b> 19:19 <b>California</b> 1:17 15:6 30:7,11,12 30:13 33:14,19 37:4 56:14 <b>call</b> 24:6 43:21 44:1 <b>called</b> 48:3 <b>careful</b> 5:14 <b>carry</b> 35:20 57:5 <b>carrying</b> 22:25 <b>carved</b> 20:1 <b>case</b> 3:4 4:5,15 4:20,23 5:17,18 5:20 7:9 8:5,10 10:6,14 13:18 15:25 16:19 20:10 21:11 23:18 26:3,5 28:6,17 29:9 33:10,21 35:10 40:24,25 41:12 42:18 43:13,18 49:12 51:15,15 52:5,20 57:1,3 57:25 58:2,4 59:14 60:10 61:2 62:3,4 <b>cases</b> 3:20 23:17 32:20 33:24 41:23 48:5,6 49:4 51:5,7,8 51:10,18,22,24 52:7,22 <b>catch-all</b> 3:24 <b>categories</b> 21:4	21:7 <b>category</b> 20:2 <b>cause</b> 3:25 4:10 4:13 12:22 13:4 13:19 15:17 17:3,4 21:2 24:2,16 25:11 25:13 26:1,6,21 27:10,12 31:11 32:24 33:9,23 34:22,24 35:1,3 35:11,24 36:1 37:5,16 38:2,4 38:8,12 39:6,7 39:9,19 40:4,5 40:13 44:25 46:6,14 48:19 49:22 51:25 52:2,12,16 54:7 55:25 56:11,15 57:2 60:9,18 61:7 <b>caused</b> 27:21 <b>caution</b> 60:3 <b>certain</b> 51:1 <b>certainly</b> 4:24 6:5 9:25 22:24 24:5 26:14 36:1 39:10 42:6 47:9 48:25 52:21 54:17 <b>challenge</b> 55:8 <b>change</b> 28:12 37:20,20 <b>changed</b> 37:22 54:14 <b>characteristic</b> 17:24 <b>check</b> 16:21 <b>checked</b> 27:5 <b>checking</b> 26:10 <b>Chicago</b> 61:1 <b>Chief</b> 3:3,9 4:14 4:19 12:3,7 16:16,18 20:15	20:21 25:24 29:2 30:19 31:2 31:6,13 32:4,18 40:9,21 42:2,7 43:4 46:1,9,12 46:18 58:5,9,19 58:24 59:17 62:1 <b>circuit</b> 4:5,24 6:7 20:4 35:10 43:13 51:22 52:6 60:23 <b>circumstance</b> 24:20,20 <b>circumstances</b> 3:15 4:7 5:13 7:3,8 9:8 20:25 24:15 41:7 48:25 51:11 54:8,10,11 59:25 60:5,12 60:16 <b>cite</b> 20:10 46:1 46:18 51:5,18 61:1 <b>cited</b> 23:18 <b>civil</b> 3:13 <b>claim</b> 5:17 47:22 <b>class</b> 52:3 <b>clear</b> 8:17 24:14 32:21 42:8 45:19 55:7 57:17 <b>clearly</b> 32:15 <b>client</b> 33:25 34:10 <b>clients</b> 34:14 <b>close</b> 12:23 <b>closer</b> 18:17 <b>closet</b> 37:14,21 <b>Coates</b> 1:17 2:3 2:13 3:6,7,9 4:18,21 5:10,24 6:2,5,22 7:19 7:22 8:15,22	9:7,20 10:4,11 10:25 11:8,14 11:16,24 12:5,9 13:6,11,20 14:1 14:5,10 15:5,15 15:23 16:6,9,25 17:6,18,21 18:3 18:7,16,25 19:4 19:10,14,17,24 59:18,19,21 <b>Code</b> 15:6 30:13 30:23 33:14,20 56:14 <b>colors</b> 9:24 10:13 10:15 17:12,15 18:22 19:6 <b>combine</b> 59:3 <b>come</b> 6:22 12:10 16:1 25:17 45:10 49:4 52:23 53:4 56:7 57:4 <b>comes</b> 6:6 <b>coming</b> 52:7 <b>commission</b> 34:7 <b>commit</b> 15:8 17:5 30:2,8 34:8 <b>commits</b> 11:4 <b>committing</b> 30:16 33:16 52:10 <b>common</b> 54:20 <b>compare</b> 45:23 <b>competent</b> 32:9 32:11 <b>complete</b> 10:21 <b>completely</b> 50:17 <b>complied</b> 46:21 <b>conceded</b> 45:7 <b>concern</b> 60:17 <b>concerned</b> 21:17 58:1,3 <b>conclusion</b> 58:13 <b>condition</b> 54:20 <b>conduct</b> 42:11
--	---	--	--	--



<b>conducted</b> 48:15	29:5,6	<b>crime-fighting</b>	<b>definitely</b> 11:9	43:12
<b>conducting</b> 20:24	<b>counsel</b> 5:16	41:10	<b>definition</b> 39:13	<b>discusses</b> 23:8
<b>confined</b> 28:2	12:2 20:15 31:2	<b>criminal</b> 3:14	<b>degree</b> 25:14	<b>dispose</b> 11:17
<b>confining</b> 17:9	58:5 59:17,23	14:13 19:21,23	<b>denying</b> 3:13	13:8
<b>connection</b> 7:13	62:1,2	30:22 37:6	<b>Department</b> 1:20	<b>dispositive</b> 6:8
8:25 16:13	<b>couple</b> 45:17	38:19 45:4 49:3	<b>depend</b> 22:2	40:20,22 61:21
<b>consider</b> 7:23	<b>course</b> 16:16,19	<b>culture</b> 61:6	<b>depending</b> 61:13	<b>dispute</b> 48:22
<b>consideration</b>	28:19 32:2 36:8	<b>curiae</b> 1:21 2:7	<b>depends</b> 9:7 11:8	<b>district</b> 20:3
26:22	41:1,21 42:10	20:18	<b>depict</b> 19:21	23:13 40:16
<b>consistent</b> 43:17	49:5 51:13	<b>curious</b> 44:18,21	<b>depicting</b> 19:23	41:4,9,15 42:1
<b>constitutional</b>	59:12	<b>current</b> 28:9,14	<b>deposit</b> 54:22	42:5 60:22
15:14 45:21	<b>court</b> 1:1,14 3:10	<b>currently</b> 28:10	<b>deposition</b> 12:20	<b>doctrine</b> 37:4
<b>contemplating</b>	3:12,17 4:2,21	<b>CURT</b> 1:3	44:16	48:4,8 59:24
60:4	4:22 5:11,19	<b>custodian</b> 54:23	<b>deputy</b> 1:19	<b>documents</b> 14:8
<b>contend</b> 58:6	14:11 20:3,21		40:16 41:4,15	<b>doing</b> 15:12
<b>contention</b> 60:21	23:13,14,21	<b>D</b>	42:1,4	<b>domestic</b> 7:24
<b>contesting</b> 35:5,6	24:13,16 25:2	<b>D</b> 3:1	<b>described</b> 47:23	8:11,20 9:9
35:7	26:4,15 27:8,14	<b>damages</b> 47:4	<b>despite</b> 28:5	44:4,8
<b>context</b> 3:14,14	27:15,23,25	<b>danger</b> 54:18	<b>detail</b> 16:11	<b>double-edged</b>
4:22 6:6 14:14	31:7,8 32:21	<b>databases</b> 45:2,3	<b>detailed</b> 4:9	41:22
20:11 25:15,18	33:2,5,7 41:5	58:14,17 59:5	<b>Detective</b> 41:11	<b>doubt</b> 7:22
25:20,21,23	42:8 43:14,16	<b>dealing</b> 53:23	41:16 44:15	<b>drafted</b> 42:19
26:17 27:19	48:7,13 50:5	<b>deals</b> 19:25	52:19 58:13,22	<b>drawers</b> 42:15
29:16 32:24	51:13 59:14,15	<b>decals</b> 18:5	59:4	45:9
52:18	60:22 61:16	<b>DECEASED</b> 1:8	<b>determination</b>	<b>drawn</b> 37:2 51:1
<b>contexts</b> 52:9	<b>courts</b> 4:24 6:7	<b>December</b> 1:11	3:18 4:1 17:2	58:13
<b>continue</b> 9:10	8:16 25:18	<b>decide</b> 6:1	21:1 40:13	<b>drug</b> 31:15
<b>continued</b> 36:17	45:19 48:2	<b>decided</b> 35:10	59:13 60:13	<b>D.A</b> 41:16,22
<b>contraband</b>	51:23	<b>decision</b> 4:6	<b>determine</b> 24:17	<b>D.C</b> 1:10,20,23
53:14	<b>Court's</b> 4:6,11	26:11 52:6	<b>determined</b> 3:16	
<b>contrary</b> 15:3	37:3 43:17	<b>decisions</b> 45:18	<b>determining</b>	<b>E</b>
<b>control</b> 18:9	45:18	<b>defective</b> 33:12	14:10	<b>E</b> 2:1 3:1,1
23:10	<b>covers</b> 45:16	<b>defendant</b> 7:11	<b>developed</b> 61:9	<b>effect</b> 41:5
<b>conversations</b>	<b>created</b> 5:19,21	10:9	<b>difference</b> 37:8	<b>effectively</b> 32:1
41:14	<b>creating</b> 38:19	<b>defendant's</b> 12:8	37:12 45:13	<b>either</b> 26:8 56:16
<b>cop</b> 32:17	<b>Creighton</b> 8:18	57:15	57:11	<b>elude</b> 36:17
<b>cops</b> 43:22 44:1	<b>crime</b> 7:13,20,23	<b>defense</b> 5:23	<b>different</b> 21:7	<b>encounter</b> 54:8
<b>correct</b> 4:18 5:9	8:9 9:8,15 11:4	36:8	43:10,24 51:21	<b>encourage</b> 31:23
9:20 11:14 12:9	11:9 15:8 17:5	<b>deference</b> 3:19	<b>difficulty</b> 6:16	42:3,7 60:1,12
16:25 17:18	30:2,8 33:16,22	<b>deficient</b> 7:4	<b>directly</b> 29:20	<b>endorsed</b> 48:8
19:4 24:8,22	34:7 37:17 38:2	<b>definable</b> 38:19	<b>disagree</b> 47:22	<b>engage</b> 24:17
35:4 36:13	38:6,9,14 44:17	<b>defined</b> 24:20	47:25	50:16
39:24 40:2 46:4	44:23 49:16	38:18	<b>discharged</b> 34:1	<b>engaged</b> 38:18
50:15	50:11,22	<b>defines</b> 27:20	<b>disclosed</b> 6:15	<b>enter</b> 37:10 43:4
<b>correctly</b> 29:3,5	<b>crimes</b> 19:13	<b>defining</b> 25:1	<b>discussed</b> 31:15	<b>entered</b> 43:6

<b>entire</b> 6:16 20:11 52:12	15:21 18:7 34:11 39:17	5:6 7:2 14:14 14:19 15:3,16	<b>flees</b> 29:10	10:16 11:1,4,7
<b>entitled</b> 3:18	<b>execute</b> 42:25	15:22 16:1,2,3	<b>follow</b> 39:18	11:20,21 13:7
10:6 11:5	53:3	16:7 24:22	<b>Following</b> 47:16	13:10 15:18
<b>envelope</b> 41:18	<b>executed</b> 45:23	25:16,20,24	<b>follows</b> 20:22	16:13 17:4,12
<b>especially</b> 59:3	<b>executes</b> 5:8	26:8,9,10 27:3	<b>footnote</b> 7:6	17:15,16,22,22
<b>ESQ</b> 1:17,19,23	<b>executing</b> 27:4	28:2,2 32:10,23	<b>Ford</b> 52:16,17	18:2,5,6,13,14
2:3,6,10,13	43:3	32:25	<b>form</b> 24:10	18:21,22 19:1,1
<b>essentially</b> 8:13	<b>execution</b> 47:12	<b>false</b> 58:6,7,25	<b>former</b> 34:1	19:25 20:12
41:5 46:23	<b>EXECUTOR</b> 1:6	<b>falsified</b> 3:20	<b>formulated</b> 28:10	21:6,10,18,21
50:16 61:16	<b>exercising</b> 33:4	<b>familiarity</b> 24:1	<b>formulation</b>	22:3,12 23:8
<b>establish</b> 23:10	<b>existed</b> 57:9	<b>family</b> 34:14 61:3	27:15	29:19 34:3
41:24,25 49:9	<b>existence</b> 24:16	<b>far</b> 4:8 23:13	<b>forth</b> 3:12 5:7	35:16 38:17
50:8	27:13 31:12	<b>Fathers</b> 7:17	13:7 30:12	39:11,13 44:24
<b>established</b> 33:8	<b>expand</b> 21:14,22	<b>favored</b> 20:22	43:16 47:6	48:17 50:9 51:4
60:20 61:15	<b>experience</b> 13:7	<b>fear</b> 38:20	<b>forward</b> 26:20	61:1,3,6,11
<b>establishing</b>	<b>expert</b> 39:12	<b>feature</b> 4:15	<b>foster</b> 12:9	<b>gangland</b> 7:23
41:24 49:3	<b>explained</b> 44:3	<b>Federal</b> 30:22	<b>foul</b> 46:23	<b>gangs</b> 8:24 11:1
<b>ESTATE</b> 1:7	<b>explanation</b>	<b>felon</b> 44:21 53:22	<b>found</b> 9:22,23	13:8 19:5,6
<b>ET</b> 1:3,8	57:19	56:22	10:11 17:11	39:13
<b>evaluating</b> 45:19	<b>explicitly</b> 48:7	<b>find</b> 9:13 10:14	18:22 19:18,19	<b>gang-related</b>
<b>evidence</b> 3:14	<b>Explorer</b> 52:17	17:23 18:25	24:2 34:24 35:2	7:15 8:2,12
7:1 10:4,6,23	<b>expressed</b> 16:2	19:5 22:24	35:12,18 36:2,6	9:15,18 11:13
17:16,21 19:10	<b>extent</b> 12:13	24:16 25:9	40:5-61:8,14	44:17 47:10,21
19:13,21,23	<b>extra</b> 60:6,7	41:19 45:9	<b>Founding</b> 7:17	50:2,6,7,11,22
21:10 23:1,1		47:20 48:21	<b>fourth</b> 6:24 7:17	<b>gap</b> 51:17
50:1	<b>F</b>	49:23 54:25	14:11 15:4	<b>Gates</b> 8:17
<b>Ewing</b> 23:18	<b>face</b> 5:21	<b>finding</b> 18:4	20:23 21:20,24	<b>general</b> 1:20
<b>exact</b> 14:21	<b>fact</b> 4:15 5:17	19:13 59:23	22:17 24:1 33:3	7:16 19:8,9,10
<b>exactly</b> 31:21	26:4 27:5 39:25	<b>fine</b> 41:17	46:21 51:9 55:8	19:22 29:10,13
51:15 54:11	41:3,23 43:20	<b>fingerprints</b> 49:7	58:1	29:15 51:8 58:4
56:21 58:2	44:21 48:22	<b>Finish</b> 30:19	<b>Framers</b> 58:3	<b>generally</b> 6:22
<b>example</b> 9:23	51:3,4 59:6	<b>firearm</b> 23:1	<b>fraud</b> 52:10,12	41:1
25:24 37:14	60:25 61:9	60:24	<b>front</b> 6:20	<b>generic</b> 52:3
49:4 50:9 52:9	<b>factor</b> 6:8	<b>firearms</b> 17:15	<b>function</b> 3:23	<b>gentleman</b> 8:22
<b>exception</b> 7:2	<b>facts</b> 14:3 29:25	21:17 22:20	<b>fundamental</b>	9:10 17:6
<b>exceptions</b> 60:2	32:24 36:16	52:19	57:11	<b>Ginsburg</b> 8:8,19
60:14	51:1,7 61:9,22	<b>first</b> 6:13 20:1	<b>further</b> 17:1,9	9:3,14 10:1,8
<b>exclusion</b> 4:22	<b>factual</b> 4:9 5:13	21:20 22:10,17	<b>G</b>	11:3 19:20
6:25	<b>fact-dependent</b>	23:2 25:1 35:23	<b>G</b> 3:1	27:11 45:5 47:1
<b>exclusionary</b>	50:25	40:25 44:2	<b>gang</b> 7:11,13,20	57:12,18
48:5	<b>fact-specific</b> 8:16	45:18 49:15	7:24,25 8:3,6,8	<b>girl</b> 38:9,25
<b>exculpates</b> 6:3	<b>fair</b> 16:14 43:8	50:3 51:24	8:10,11,20 9:4	<b>girlfriend</b> 7:25
<b>exculpatory</b> 3:21	<b>fairly</b> 8:5	53:13 57:3,9	9:16,24,24	34:1 53:10 56:3
<b>excuse</b> 6:19	<b>faith</b> 4:25 5:3,4,5	<b>five</b> 43:24	10:12,12,13,15	<b>give</b> 28:12 52:2
				<b>given</b> 31:25

<b>go</b> 3:19 6:12 9:12 10:22 13:1 14:14 26:20 41:19,24 44:20 45:7 59:24	36:19,20,20,24 37:13 39:9 40:5 53:5 54:14 57:20,21	<b>heightened</b> 25:15	59:22	<b>increases</b> 23:4
<b>goes</b> 5:5 27:23 28:7 42:14 61:10	<b>guns</b> 10:23 11:7 12:24 13:1,15 13:16,19 17:4 21:5,10 22:4,14 22:23 33:13 34:5 35:18,18 38:4,5,8,11,12 38:21,22,23,24 39:12,13,14,22 39:23 40:1,4 45:10,11,16 47:20 53:7 54:9 60:18,19	<b>held</b> 3:17 <b>help</b> 9:25 <b>helping</b> 11:22 <b>hidden</b> 61:18 <b>hide</b> 9:1 44:4,7 <b>hiding</b> 58:16 59:2 <b>high</b> 3:12 5:11 61:15 <b>highly</b> 4:8 <b>hold</b> 27:16,17 <b>home</b> 11:6 12:6 29:11 35:18 51:4 <b>homes</b> 61:4 <b>Honor</b> 6:10 9:20 18:7,16 27:15 27:24 40:7,20 <b>Honor's</b> 21:16 <b>hook</b> 6:19 <b>hope</b> 19:13 <b>hoped</b> 48:21 <b>Horton</b> 37:4 <b>house</b> 10:20 12:3 12:4,5,8,17,24 14:22,24,25 15:11,12 18:19 18:20,24 34:15 36:3,3,12,18 36:18 37:14,21 38:2,5,8,13,16 38:24,25 39:20 40:6 42:14 43:9 45:7,12 49:16 53:4 54:9 55:13 57:10,23,23 <b>Housing</b> 61:1 <b>hypothesis</b> 21:16 <b>hypothesized</b> 22:8 <b>hypothesizing</b> 54:2 <b>hypothetical</b> 45:24 55:18	<b>I</b> <b>identification</b> 9:22 <b>identify</b> 46:2 <b>identifying</b> 17:24 <b>identity</b> 23:10 <b>illegal</b> 11:10,25 13:17 28:5 39:14,15 53:14 55:15 <b>illegally</b> 11:21 <b>Illinois</b> 8:17 <b>illogical</b> 16:12 <b>illustrates</b> 25:14 <b>imagine</b> 47:7 <b>immune</b> 32:21 33:6 41:3 <b>immunity</b> 3:13 4:11 6:6,25 8:17 14:13 21:9 22:1,24:18 25:17,21,23 27:20 31:9 32:1 32:16 33:1 43:18 47:3 48:5 51:14 <b>implicate</b> 21:23 <b>import</b> 25:22 44:20 <b>important</b> 30:10 34:13 <b>incident</b> 51:2 <b>includes</b> 22:24 <b>including</b> 23:17 45:2 52:16 <b>incompetence</b> 25:13 <b>incompetent</b> 4:3 5:12 16:10 25:5 25:12 26:11,12 61:16 <b>incorporates</b> 7:7 <b>increase</b> 50:10	<b>incur</b> 60:5 <b>independent</b> 21:1,23 <b>indication</b> 3:22 <b>indications</b> 9:10 <b>indicia</b> 3:25 4:25 7:16 17:22 18:13 19:1,25 20:12 22:3 23:9 27:12 31:11 50:2,6,8 61:10 <b>individual</b> 22:25 29:17 31:15 <b>inferences</b> 51:1 <b>information</b> 3:20 3:21 6:14,18,20 8:13 9:23 11:22 31:16 32:5,6 41:13 49:1 52:20 59:4 <b>initial</b> 3:17 <b>innocent</b> 34:14 36:3 39:20 <b>inquiries</b> 46:13 <b>inquiry</b> 8:16 24:17 28:2 47:23 <b>inside</b> 53:5 <b>instructions</b> 43:12 <b>intended</b> 33:16 33:22 50:8 <b>intending</b> 35:19 <b>intends</b> 9:10 <b>intensity</b> 22:10 <b>intent</b> 15:8 30:15 34:6 <b>interest</b> 21:23 <b>interpret</b> 20:11 <b>interrupt</b> 30:7 <b>intimidation</b> 38:20 <b>invalid</b> 3:16 47:14 48:2,10
<b>going</b> 13:16 15:15,22 16:18 29:22 43:25 44:5,8 49:24 55:23 56:1,2 60:6 <b>good</b> 4:25 5:3,4,5 5:6 7:2 14:14 14:19 15:3,16 15:22,25 16:2,7 23:1 24:22 25:16,20,23 26:8,9,10 27:6 28:2 32:10,23 32:25 38:10 41:17 <b>gotten</b> 45:24 46:8 47:5,7 <b>government</b> 45:2 58:14,17 <b>governs</b> 25:20 25:21 <b>great</b> 3:18 32:20 <b>green</b> 52:15 <b>grip</b> 52:21 <b>Groh</b> 43:13 45:18 46:2,5,18 46:23 <b>gross</b> 25:13 <b>grossly</b> 25:4,11 <b>grounds</b> 55:4 <b>group</b> 38:18 <b>guess</b> 14:20 22:12 <b>gun</b> 10:9,10 11:9 11:10 35:16,25 36:2,6,15,19	<b>half</b> 48:10,10,10 48:11 59:13 <b>handgun</b> 15:20 <b>handguns</b> 14:23 14:25 36:7 <b>happen</b> 21:11 32:22 38:1 <b>happened</b> 37:21 57:12 <b>happens</b> 47:13 54:24 56:7 <b>happenstance</b> 49:18 <b>hard</b> 41:3 <b>harder</b> 16:19 <b>Harlow</b> 7:7 <b>harm</b> 46:6,23 47:11 <b>harmed</b> 45:20 <b>head</b> 14:9 <b>hear</b> 3:3 13:23 <b>hearing</b> 27:19 <b>heartland</b> 58:1 <b>heavy</b> 32:16	<b>heightened</b> 25:15 <b>held</b> 3:17 <b>help</b> 9:25 <b>helping</b> 11:22 <b>hidden</b> 61:18 <b>hide</b> 9:1 44:4,7 <b>hiding</b> 58:16 59:2 <b>high</b> 3:12 5:11 61:15 <b>highly</b> 4:8 <b>hold</b> 27:16,17 <b>home</b> 11:6 12:6 29:11 35:18 51:4 <b>homes</b> 61:4 <b>Honor</b> 6:10 9:20 18:7,16 27:15 27:24 40:7,20 <b>Honor's</b> 21:16 <b>hook</b> 6:19 <b>hope</b> 19:13 <b>hoped</b> 48:21 <b>Horton</b> 37:4 <b>house</b> 10:20 12:3 12:4,5,8,17,24 14:22,24,25 15:11,12 18:19 18:20,24 34:15 36:3,3,12,18 36:18 37:14,21 38:2,5,8,13,16 38:24,25 39:20 40:6 42:14 43:9 45:7,12 49:16 53:4 54:9 55:13 57:10,23,23 <b>Housing</b> 61:1 <b>hypothesis</b> 21:16 <b>hypothesized</b> 22:8 <b>hypothesizing</b> 54:2 <b>hypothetical</b> 45:24 55:18	<b>I</b> <b>identification</b> 9:22 <b>identify</b> 46:2 <b>identifying</b> 17:24 <b>identity</b> 23:10 <b>illegal</b> 11:10,25 13:17 28:5 39:14,15 53:14 55:15 <b>illegally</b> 11:21 <b>Illinois</b> 8:17 <b>illogical</b> 16:12 <b>illustrates</b> 25:14 <b>imagine</b> 47:7 <b>immune</b> 32:21 33:6 41:3 <b>immunity</b> 3:13 4:11 6:6,25 8:17 14:13 21:9 22:1,24:18 25:17,21,23 27:20 31:9 32:1 32:16 33:1 43:18 47:3 48:5 51:14 <b>implicate</b> 21:23 <b>import</b> 25:22 44:20 <b>important</b> 30:10 34:13 <b>incident</b> 51:2 <b>includes</b> 22:24 <b>including</b> 23:17 45:2 52:16 <b>incompetence</b> 25:13 <b>incompetent</b> 4:3 5:12 16:10 25:5 25:12 26:11,12 61:16 <b>incorporates</b> 7:7 <b>increase</b> 50:10	<b>increases</b> 23:4 <b>incur</b> 60:5 <b>independent</b> 21:1,23 <b>indication</b> 3:22 <b>indications</b> 9:10 <b>indicia</b> 3:25 4:25 7:16 17:22 18:13 19:1,25 20:12 22:3 23:9 27:12 31:11 50:2,6,8 61:10 <b>individual</b> 22:25 29:17 31:15 <b>inferences</b> 51:1 <b>information</b> 3:20 3:21 6:14,18,20 8:13 9:23 11:22 31:16 32:5,6 41:13 49:1 52:20 59:4 <b>initial</b> 3:17 <b>innocent</b> 34:14 36:3 39:20 <b>inquiries</b> 46:13 <b>inquiry</b> 8:16 24:17 28:2 47:23 <b>inside</b> 53:5 <b>instructions</b> 43:12 <b>intended</b> 33:16 33:22 50:8 <b>intending</b> 35:19 <b>intends</b> 9:10 <b>intensity</b> 22:10 <b>intent</b> 15:8 30:15 34:6 <b>interest</b> 21:23 <b>interpret</b> 20:11 <b>interrupt</b> 30:7 <b>intimidation</b> 38:20 <b>invalid</b> 3:16 47:14 48:2,10

<b>investigating</b> 9:8 50:21	10:17 11:2,3,11 11:15,19 12:2,3 12:7,11,12,13 12:19 13:9,12 13:21 14:4,6,18 15:10,21,24 16:7,16,17,18 17:3,14,19 18:1 18:4,11,18 19:2 19:7,12,15,20 20:15,21 21:3 22:2,11,18 23:19,24 24:19 24:25 25:6,24 26:7,18 27:1,11 28:8,19,23 29:2 29:8,15,24 30:1 30:5,10,19 31:2 31:6,13 32:4,18 33:10,25 34:10 34:11,16,19 35:2,8,13 36:11 36:14,22,23 37:11,19,25 38:3 39:4,11,21 39:25 40:3,9,21 42:2,7,13,23 42:25 43:4,19 44:11 45:5 46:1 46:9,12,18 47:1 47:13,15,18,19 48:17,24 49:11 49:21 50:12,23 51:16,19 52:23 53:1,15,18,25 54:2,4,10,13 54:24 55:4,10 55:17 56:1,7,17 56:20,25 57:12 57:17 58:5,9,19 58:24 59:17,22 60:17 62:1	<b>investigation</b> 8:4 49:17	<b>invoked</b> 30:17	<b>involve</b> 11:11 51:7	<b>involved</b> 8:20 31:13,18 52:20	<b>involves</b> 11:9,10	<b>irrelevant</b> 8:4 15:18 49:16	<b>issue</b> 7:13 9:17 16:20 22:1,17 35:8,9 48:2 49:24	<b>issued</b> 23:21 33:15	<b>issues</b> 41:8	<b>issuing</b> 53:2	<b>item</b> 34:23	<b>items</b> 9:19 15:7 30:14 33:15,21 33:24 46:2	<hr/> <b>J</b> <hr/>	<b>JA</b> 59:6	<b>Jane</b> 40:17	<b>joint</b> 22:16 30:11	<b>judge</b> 23:21,24 23:25 24:5,6,8 32:8,13	<b>judges</b> 20:4,6	<b>judgment</b> 27:9 33:4 42:10	<b>judgments</b> 53:24	<b>judicial</b> 3:23	<b>jumped</b> 20:8	<b>jurisprudence</b> 4:11	<b>Justice</b> 1:20 3:3 3:9 4:14,19 5:3 5:16,25 6:3,11 7:9,21 8:8,19 9:3,14 10:1,8	<hr/> <b>K</b> <hr/>	<b>Kagan</b> 12:12 21:3 22:18 28:8 47:19 50:23 51:16,19	<b>keep</b> 29:24 46:13	<b>Kelly</b> 58:21 59:10 61:19	<b>Kennedy</b> 29:8,15 30:1,5,10 36:11 36:14,22,23 55:17	<b>Kennedy's</b> 37:25	<b>kill</b> 29:22 34:2,3 35:15 38:11 43:24,25 53:10 56:3	<b>killed</b> 38:9	<b>killing</b> 38:25	<b>kills</b> 56:8	<b>kind</b> 43:8 52:1 58:2	<b>knew</b> 14:15,16 18:11,21 57:8 58:25	<b>know</b> 4:21 8:5 15:19 17:15 18:2,14 27:2 28:20,25 32:12 32:12,13,13,14 33:23 38:16,16 38:17 41:2,6,15 41:16,18,20 43:9 48:11,14 49:3,7 51:6,12 51:23 52:12 53:21 54:23	<b>knowingly</b> 4:4 5:12 16:10 61:17	<b>known</b> 28:4 29:18 34:2 53:9	<b>knows</b> 6:14 39:12,16	<hr/> <b>L</b> <hr/>	<b>lab</b> 49:5	<b>lacking</b> 3:24 25:11 27:12 31:11	<b>language</b> 25:3 30:11	<b>large</b> 23:11 51:17 54:25	<b>Laughter</b> 55:20	<b>law</b> 4:4 5:12 16:11 20:10 30:7 42:12 43:18 51:9 61:17,24	<b>lawful</b> 36:7	<b>lawfully</b> 37:1,10 57:25	<b>lawyer</b> 23:25 24:4	<b>lawyers</b> 32:7,12	<b>lead</b> 43:11 44:9 44:12	<b>leading</b> 52:5	<b>leave</b> 54:25 55:3 56:4	<b>left</b> 8:2	<b>legal</b> 53:7,16	<b>legally</b> 53:7 56:22	<b>legion</b> 23:16	<b>legitimate</b> 49:1,6	<b>legitimately</b> 22:21	<b>Leon</b> 3:12 5:17 5:19,20 7:6 24:13 25:5 27:20,25 28:1	<b>let's</b> 6:11 9:16,16 16:23 21:9,15 49:23 53:7,25	<b>liability</b> 41:25 49:3 60:6	<b>liable</b> 25:9 41:8	<b>license</b> 10:22 54:4	<b>lie</b> 32:3	<b>light</b> 7:3 14:16 54:8	<b>limited</b> 41:7 45:25 47:8,8	<b>line</b> 43:11 51:24	<b>lines</b> 51:22	<b>link</b> 48:20	<b>links</b> 49:1,25	<b>little</b> 6:15 9:12 13:15	<b>live</b> 36:4 38:22	<b>lived</b> 59:8	<b>lives</b> 34:14	<b>living</b> 12:17 35:4 35:14,19	<b>location</b> 49:2	<b>logic</b> 17:10	<b>long</b> 8:11 41:24	<b>look</b> 14:6,7,12 14:14,18 22:3,4 22:6,13,14 26:8 45:8,14,22 51:21,25 52:2 52:12 61:20	<b>looked</b> 20:6	<b>looking</b> 10:22 20:6 22:11 26:18 36:16 37:14 45:8	<b>looks</b> 14:25	<b>Los</b> 1:17	<b>lot</b> 29:16 31:16	<hr/> <b>M</b> <hr/>	<b>magistrate</b> 6:17 6:21 12:21 16:23 17:2 18:23 20:24 24:15 25:4,8,12 25:14 26:21 32:2,8 41:2,8 41:19 42:20 44:23 45:1,3 60:11 61:25
-----------------------------------	--	-----------------------------------	----------------------	------------------------------	--	-------------------------	--------------------------------------	---	------------------------------	--------------------	---------------------	-------------------	--	----------------------	----------------	-------------------	--------------------------	--	----------------------	------------------------------------	------------------------	----------------------	--------------------	------------------------------	--	----------------------	--	-------------------------	-----------------------------------	---	------------------------	---	--------------------	----------------------	-------------------	-------------------------------	--	--	---	--------------------------------------	-------------------------------	----------------------	-----------------	---	-------------------------------	-----------------------------------	-----------------------	--	--------------------	----------------------------------	-----------------------------	------------------------	---------------------------------	---------------------	---------------------------------	-----------------	----------------------	------------------------------	---------------------	--------------------------	------------------------------	---	---	-------------------------------------	-------------------------	------------------------------	-----------------	--------------------------------	-------------------------------------	-------------------------	--------------------	-------------------	----------------------	----------------------------------	------------------------	-------------------	--------------------	--------------------------------------	----------------------	--------------------	------------------------	---	--------------------	---	--------------------	-----------------	------------------------	----------------------	--

<b>magistrates</b> 31:24 32:21	7:25 8:9,11 9:4 11:4 15:18 18:2	58:15 59:12	52:5 60:23	60:10 61:7,17
<b>magistrate's</b> 3:18 4:1 21:1	18:6,14 19:1,5	<b>misspoke</b> 29:6	<b>Nissan</b> 52:15	61:22
27:9 28:5 60:13	29:18 34:3	<b>misstatement</b> 34:17	<b>nonsuppression</b> 7:1	<b>officers</b> 4:16 8:1
<b>main</b> 24:14	35:16 38:17	<b>mistake</b> 31:19	<b>note</b> 8:5 10:14	25:8,9,10,25
<b>majority</b> 23:18	39:11 44:24	32:25	20:2 59:25	28:11,12 31:9
32:20	51:4 61:1	<b>mistaken</b> 58:23	<b>notes</b> 55:17	32:20,22,25
<b>making</b> 16:19	<b>members</b> 8:6	<b>mistakes</b> 32:22	<b>notion</b> 60:19	33:2 40:13,15
44:19	18:21,24 39:12	32:23	<b>number</b> 27:16	42:3,17,18 43:7
<b>Malley</b> 3:11 4:2	61:3,4	<b>mix</b> 26:12	<b>Nuremberg</b> 5:23	44:22 46:6,15
24:13 25:3,18	<b>membership</b> 8:4	<b>Model</b> 30:23	<hr/> <b>O</b> <hr/>	60:1,3,12
27:8,16 31:8,13	8:10 11:1,7	<b>Monday</b> 1:11	<b>O</b> 2:1 3:1	<b>officer's</b> 10:18
31:18,21 32:22	16:13 17:16,22	<b>Monell</b> 41:24	<b>object</b> 52:1,2	11:12 14:9 20:9
41:6 42:8 43:16	18:5,14 19:1,25	<b>moniker</b> 9:24	<b>objective</b> 14:2	43:11
<b>manner</b> 9:1	20:12 21:6,10	10:13,16	25:19 27:18	<b>official</b> 27:13
11:16 13:8	22:12 50:9	<b>months</b> 59:7	28:2 32:10	31:12
47:22 61:2	61:11	<b>more-concrete</b> 43:8	43:16,20 50:18	<b>oh</b> 7:19 13:3 38:7
<b>manufacturer</b> 18:23	<b>memberships</b> 22:4	<b>multiple</b> 18:24	61:22	41:16 47:4
<b>man's</b> 18:14	<b>mentioned</b> 31:20	<b>murder</b> 29:18,21	<b>objectively</b> 25:2	<b>okay</b> 6:1 23:14
<b>material</b> 9:5	<b>Messerschmidt</b> 1:3 3:4 41:11	<hr/> <b>N</b> <hr/>	28:3	23:15 32:13,13
58:15	41:16 44:15	<b>N</b> 2:1,1 3:1	<b>objects</b> 52:3	32:14,15 39:1
<b>materially</b> 58:24	52:19 58:22	<b>name</b> 53:5	<b>obtained</b> 46:25	53:17 54:1
59:12	59:4	<b>narrow</b> 20:25	59:5	<b>omitted</b> 3:20
<b>materials</b> 21:4	<b>Messerschmid...</b> 58:14	24:15,19 47:8	<b>obtaining</b> 20:23	<b>on-the-scene</b> 60:14
47:21	<b>meth</b> 49:5	<b>narrowed</b> 24:11	<b>offense</b> 30:16	<b>on-the-spot</b> 53:24
<b>matter</b> 1:13 62:5	<b>methampheta...</b> 49:10	<b>narrowly</b> 37:2	<b>office</b> 32:12	<b>opinion</b> 26:3
<b>mean</b> 7:19 10:6	<b>Millender</b> 1:6,7	<b>natural</b> 26:22	<b>officer</b> 3:15,20	<b>opponent</b> 38:6
10:10,13 12:15	3:5 57:14	<b>nature</b> 10:25	3:23,25 4:3,7	<b>opposed</b> 15:17
13:6,13 14:1	<b>Millenders</b> 36:2	11:18,24 50:25	4:12 5:1,6,8,14	60:18
15:22 18:12	36:3,6,6 40:1	<b>necessarily</b> 29:15 39:18	6:14,19,25 7:3	<b>oral</b> 1:13 2:2,5,9
26:14 30:5	42:14 47:12	55:3	7:12 8:24 10:20	3:7 20:17 31:4
34:25 41:9	49:15 57:10,23	<b>need</b> 10:1,8	13:7 14:2,15	<b>order</b> 25:9 28:12
44:18 49:17	57:24	24:17 28:12,13	16:3,4 17:10	<b>ordinary</b> 8:7
50:7,16,19	<b>Millender's</b> 12:5	<b>neither</b> 14:8	20:22,25 21:9	<b>ought</b> 28:25 29:1
55:12 56:14	12:6 57:24	<b>neutral</b> 20:24	24:4,21 26:5,19	51:12
57:8 58:2 61:5	<b>minimize</b> 33:3	<b>never</b> 20:7 43:21	26:23,24 27:2,9	<b>outlier</b> 30:22
<b>meaningful</b> 21:15	<b>minimum</b> 48:12	43:25 44:14	27:20 28:4 32:5	<b>outlined</b> 27:7
<b>means</b> 6:9 8:6	<b>minute</b> 11:19	48:7 50:5 51:14	32:10,11 33:6,7	<b>outside</b> 14:14
30:16,22 61:12	<b>minutes</b> 59:18	<b>new</b> 4:15	33:11,18 34:4	44:20
<b>meant</b> 29:4	<b>mishmash</b> 26:8	<b>night</b> 44:25	35:15 41:8 42:9	<b>overrule</b> 6:13
<b>measure</b> 47:11	<b>misleading</b> 58:8	<b>Ninth</b> 4:5 35:10	42:14,16 43:11	<b>owned</b> 57:25
<b>member</b> 7:11,24		43:13 51:22	46:19,24 48:18	<b>ownership</b> 18:9
			49:12 50:13	22:22
			51:6,11,17	

<b>P</b>				
<b>P</b> 3:1	<b>permits</b> 11:5	<b>plaintiff</b> 57:14	<b>possibly</b> 9:21	55:24,24 56:11
<b>page</b> 2:2 22:16	<b>perpetrated</b> 17:7	<b>play</b> 25:17	18:13	56:15 57:2 60:9
23:14 26:3	29:17,19	<b>please</b> 3:10	<b>postulated</b> 59:22	60:18 61:7
27:17 28:1,1	<b>person</b> 29:12	20:21 31:7	<b>post-hoc</b> 50:17	<b>probably</b> 25:11
30:10	30:15 31:19	<b>point</b> 5:20,21	<b>pot</b> 5:9	25:12 26:21
<b>paperwork</b> 22:22	44:6 49:2,9	9:21 21:11 23:5	<b>practice</b> 20:22	<b>problem</b> 5:4
22:23	<b>personal</b> 23:9	25:9 26:17	<b>precaution</b> 60:7	15:25 21:14,24
<b>paragraph</b> 22:18	<b>persons</b> 23:10	30:10 34:14,21	<b>precedent</b> 6:13	22:19 23:12
23:2,4,6,7	<b>person's</b> 15:11	41:21 42:7	<b>precise</b> 60:4	35:24
<b>paragraphs</b>	15:11	51:15 57:22	<b>premise</b> 23:11	<b>problematic</b> 22:8
22:17	<b>perspective</b>	60:21	<b>premises</b> 18:8,12	<b>problems</b> 35:23
<b>paraphernalia</b>	26:19	<b>police</b> 3:15 6:14	23:11 35:4,14	<b>Procedure</b> 30:23
48:18	<b>pertinent</b> 6:18	6:19 7:12 8:1	<b>present</b> 18:8	30:24
<b>paraphrase</b>	40:14	11:4 16:3,4	21:7 42:21 49:7	<b>procure</b> 8:6
13:14	<b>petition</b> 23:15	24:4,21 28:11	52:13	11:22 13:8
<b>part</b> 7:17 9:14	<b>Petitioner</b> 30:6	28:12 29:22	<b>presumably</b> 24:1	<b>procured</b> 3:15
34:17 43:3 44:4	<b>Petitioners</b> 1:4	31:9,22,23,25	<b>presumes</b> 6:17	9:1
48:15,15 50:3,6	1:18,22 2:4,8	32:5 34:4,22	<b>pretrial</b> 54:20	<b>procures</b> 11:17
50:8 61:5	2:14 3:8 20:19	35:24 36:10,17	<b>pretty</b> 25:3 32:16	<b>professional</b>
<b>particular</b> 18:8	42:18 44:13,15	36:25 37:6,9	<b>prevent</b> 17:13	33:4
22:25 23:9	44:19 50:4,7	38:1 39:8 44:5	<b>Pre-Arraignm...</b>	<b>promised</b> 35:20
32:23 49:2,2	59:20	45:3,24 46:24	30:24	<b>proof</b> 11:21
50:14 51:10,11	<b>photograph</b>	47:5,7 49:4,6	<b>Principal</b> 1:19	26:24
53:3 61:13	22:13	49:18 50:20	<b>principle</b> 52:8,18	<b>proper</b> 54:23
<b>particularly</b> 51:2	<b>photographic</b>	51:6,11,17,24	<b>principles</b> 25:17	<b>properly</b> 28:15
51:22	23:1	53:11,13,20,21	25:23	37:1 45:25
<b>parts</b> 21:18,21	<b>photographs</b>	53:24 54:7,16	<b>printouts</b> 59:5	<b>property</b> 18:17
25:1	10:2 19:21,23	54:21 55:13,15	<b>prior</b> 4:20	23:9
<b>party</b> 31:15	22:12,24,25	55:22 56:10,11	<b>privacy</b> 21:23	<b>propose</b> 34:25
<b>party's</b> 39:20	<b>phrase</b> 24:9,10	56:11	<b>probability</b> 16:14	<b>proposes</b> 42:11
<b>passed</b> 7:17	<b>physical</b> 29:19	<b>Policeman</b> 25:6,6	<b>probable</b> 3:25	<b>proposition</b> 52:8
<b>pattern</b> 41:25	<b>pieces</b> 45:9	<b>pose</b> 54:17	4:10,12 15:17	58:11
<b>PAUL</b> 1:23 2:10	<b>pistol</b> 10:15	<b>position</b> 8:13	21:2 24:2,16	<b>propositions</b>
31:4	17:11 19:19	<b>possess</b> 35:17	26:1,5 27:10,12	51:9
<b>Penal</b> 15:6 30:13	52:21	36:7	31:11 32:24	<b>protect</b> 8:2 28:21
30:23 33:14,19	<b>pistols</b> 53:9	<b>possessed</b> 30:15	33:9,23 34:22	28:24,25 29:7
56:14	<b>place</b> 6:20 21:20	<b>possesses</b> 53:8	34:24,25 35:3	<b>protection</b> 28:13
<b>penalty</b> 50:10	29:11 34:25	56:22	35:11,24 36:1	<b>protective</b> 28:11
<b>people</b> 8:7 18:19	37:1,1 49:8,19	<b>possessing</b> 10:23	37:5,16 38:2,4	28:15,18
18:19 36:4	49:19 57:3,9	<b>possession</b> 22:22	38:8,12 39:5,7	<b>protectively</b>
38:18,21 45:12	<b>places</b> 22:4,9	49:10 55:14	39:9,18 40:4,5	28:21,24 29:3
<b>perform</b> 3:23	<b>plain</b> 37:3,3	<b>possibility</b> 16:14	40:13 44:25	<b>protects</b> 28:25
<b>period</b> 13:19	59:24	57:4	46:6,14 48:19	<b>prove</b> 18:24
<b>permit</b> 48:13	<b>plainly</b> 4:3 5:12	<b>possible</b> 17:19	49:22 51:25	<b>provide</b> 57:19
	16:10 61:16	36:8,9 47:7	52:2,11,15 54:7	<b>provided</b> 4:9

<b>provides</b> 22:19 22:20	57:1	51:6 60:9 61:11 61:22	<b>remaining</b> 59:18	<b>review</b> 5:2,22 16:22
<b>provision</b> 3:24 19:20 20:12,13 23:12 30:12,17 30:21 33:14,20 56:13	<b>questioned</b> 7:12	<b>reasonableness</b> 25:19 27:18 40:12 43:16	<b>remember</b> 14:21	<b>reviewed</b> 40:17 42:4 45:1
<b>provisions</b> 23:17	<b>questioning</b> 18:21	<b>reasonably</b> 24:7 32:9,11 33:6,11 33:18 38:13 42:9,9,11 44:6 48:18 51:1	<b>Remington</b> 36:15	<b>reviewing</b> 40:11 40:12
<b>public</b> 8:1 30:16	<b>questions</b> 21:7 21:13	<b>reasons</b> 25:19 40:25 49:14	<b>render</b> 27:12 31:11	<b>Rhodes</b> 61:2
<b>purchase</b> 22:22	<b>quote</b> 58:11	<b>rebuttal</b> 2:12 20:14 59:19	<b>repeatedly</b> 6:7	<b>rifle</b> 53:14
<b>purely</b> 43:19	<b>quoted</b> 27:24	<b>recall</b> 4:23	<b>reprinted</b> 58:18	<b>rifles</b> 42:15 53:9
<b>purpose</b> 13:16 16:8 17:19 50:5	<hr/> <b>R</b> <hr/>	<b>receipts</b> 22:21	<b>request</b> 7:15 27:21	<b>right</b> 5:9 6:11 8:1 8:21 13:24 16:5 16:24 17:17 22:6 23:22 35:2 36:7 46:7,11,11 47:17,25 48:24 53:15,17 54:3,6 55:19
<b>purposes</b> 6:24 14:10 25:21 36:8 49:2 51:14 60:11,21,22	<b>R</b> 3:1 59:19	<b>recognize</b> 6:7	<b>required</b> 51:14 54:22	<b>rights</b> 45:21
<b>pursuant</b> 37:1	<b>raise</b> 22:18 23:3 23:5	<b>recognized</b> 7:4 8:6	<b>requirement</b> 60:2,14	<b>risk</b> 33:3
<b>pushing</b> 41:18	<b>rationalization</b> 50:17	<b>record</b> 45:4 48:13,14	<b>reserve</b> 20:13	<b>ROBERTS</b> 3:3 4:14,19 12:3,7 16:16,18 20:15 29:2 30:19 31:2 31:13 32:4 40:9 40:21 42:2 43:4 46:1,9,12,18 58:5,9,19,24 59:17 62:1
<b>put</b> 26:24 27:15 32:16,17	<b>react</b> 37:10	<b>records</b> 52:11,13 52:13	<b>reside</b> 58:15	<b>room</b> 25:22 53:4 54:14 55:10,11 56:21
<b>putting</b> 55:17	<b>reaction</b> 43:21	<b>red</b> 52:16,17	<b>resided</b> 58:11	<b>roughly</b> 13:22
<b>p.m</b> 62:4	<b>read</b> 12:16,21 13:3 44:2,6,11 44:12	<b>reference</b> 26:4	<b>residence</b> 16:15 17:23 19:18 43:5,6 48:21,23 50:1	<b>rule</b> 23:20 24:9 29:10,13,15 30:22 41:2 48:5
<hr/> <b>Q</b> <hr/>	<b>reading</b> 44:14	<b>regime</b> 6:17	<b>resides</b> 58:25	<b>ruled</b> 31:8 33:5
<b>qualified</b> 3:13 4:11 6:6,25 8:17 14:13 21:9 22:1 24:18 25:17,21,23 27:20 32:15 43:18 47:3 48:5 51:14	<b>really</b> 18:12 22:14 28:16 33:20 41:13 43:17 44:10 46:5 47:2 51:6 52:18 55:12 56:17,17 57:22 57:25 59:13	<b>rejected</b> 41:5	<b>resolve</b> 48:13	<b>run</b> 52:14
<b>quantum</b> 26:23	<b>reason</b> 10:19 13:14 14:21,21 14:23 15:2,13 21:16 44:17 49:6 51:25 55:14 61:24	<b>related</b> 9:6 21:17 21:18,21 23:8 51:21	<b>respect</b> 23:6 25:14 59:14,21 60:17 61:18	<b>R.Q</b> 1:23 2:10 31:4
<b>question</b> 13:13 13:21 21:19 23:3 25:1,24,25 28:3,6,7,8,16 29:9 32:3,19 33:14 37:25 40:15 43:10 44:24 46:8 47:1 47:2,4,16,18 48:9 52:24 53:21 56:18,20	<b>reasonable</b> 3:25 4:11 5:8 14:2 16:21 17:1 24:4 24:21 26:19 27:8 28:4 33:4 33:17 34:4 35:15 38:23,24 39:6 46:15,19 46:24 47:20 49:12 50:13	<b>relates</b> 11:6	<b>Respectfully</b> 51:19	<hr/> <b>S</b> <hr/>
		<b>relating</b> 21:6	<b>respects</b> 23:7 27:16 59:11	<b>S</b> 2:1 3:1
		<b>relationship</b> 7:14	<b>Respondents</b> 1:24 2:11 20:1 31:5 45:20 59:23	<b>safety</b> 45:11
		<b>release</b> 54:20	<b>response</b> 24:25 38:14 39:2	<b>sawed</b> 17:7,9
		<b>released</b> 54:19	<b>responses</b> 45:17	<b>sawed-off</b> 7:25
		<b>relevance</b> 27:6	<b>responsibility</b> 6:4	
		<b>relevant</b> 12:15 18:10 22:16 30:11 40:22,24 53:22	<b>rest</b> 33:20	
		<b>relies</b> 43:11	<b>result</b> 16:1	
		<b>rely</b> 21:1 27:9 41:1 60:2,13	<b>results</b> 58:18	
		<b>relying</b> 41:21	<b>retained</b> 24:9	

8:23 9:13,23 11:25 34:1 37:15 38:17 45:6,15 47:9 49:22,23,25 51:3 52:20 <b>saying</b> 5:24 11:3 11:20 20:8,10 51:10 <b>says</b> 7:10 10:20 13:3 15:13 27:25 33:15,21 43:21 50:19 51:24 <b>Scalia</b> 5:3 15:21 15:24 16:7,17 17:14,19 18:1,4 18:11 22:2,11 24:19,25 25:6 26:7,18 27:1 28:19,23 39:21 39:25 40:3 42:13,23,25 <b>Scalia's</b> 60:17 <b>scope</b> 21:15,22 23:2,4 45:14 <b>se</b> 7:19 53:14 <b>search</b> 4:10 7:15 8:12 9:5,18 11:5 12:23 14:24 15:1,7,10 15:11,14 17:16 18:13 19:8,9,10 20:24 21:4,5,22 22:9,9 24:2 28:5 29:11 30:7 30:14 31:10,14 33:5,13,15,19 34:25 39:22 42:4,19,20,21 43:9 45:6,14 47:8 48:15,20 50:18 52:16 57:2 58:14,17 61:14	<b>searched</b> 57:23 <b>searches</b> 22:20 22:21 <b>searching</b> 24:17 36:12,18 49:19 49:19 <b>second</b> 22:8 23:3 23:4,6,7,8 36:19,20,24 <b>secondly</b> 50:4 <b>section</b> 19:24 30:13,24 <b>secure</b> 45:10 54:17 55:16 <b>see</b> 12:18 16:21 16:23 24:5 36:19,19 37:2,5 37:21 38:1,1 41:20 52:14 56:23 <b>seek</b> 11:5 31:23 32:1,20 33:21 49:1 60:13 <b>seeking</b> 31:9 <b>seen</b> 4:23 23:12 <b>sees</b> 37:13 <b>seize</b> 17:12 29:12 33:15 37:7,15 48:19,20 53:11 53:19 55:5,23 56:13 57:13 60:18 61:8 <b>seized</b> 39:25 46:3 46:21 57:20,21 57:24 <b>seizes</b> 42:14 <b>seizing</b> 60:15 <b>seizure</b> 30:14 39:22 <b>self</b> 36:8 <b>sending</b> 60:11 61:25 <b>sense</b> 8:3 9:12 24:25 <b>sentence</b> 23:7,8	30:20 <b>Sentra</b> 52:15 <b>separate</b> 20:2 32:3 <b>separately</b> 20:7 20:9 <b>separating</b> 46:13 <b>serve</b> 17:20 <b>service</b> 44:25 <b>set</b> 3:12 5:7,11 30:12 32:23 41:7 43:16 51:11 <b>sets</b> 13:7 22:17 <b>severance</b> 48:4,8 <b>Shelley</b> 58:21 59:10 <b>Sheppard</b> 26:2,3 <b>shot</b> 43:23 <b>shotgun</b> 8:1,23 9:13,24,25 10:2 10:3,12 11:25 17:7,9 33:13 34:1 36:15 37:15 38:17 45:7,9,15 47:9 48:22 49:22,23 49:25 51:3 52:21 <b>shouting</b> 43:25 <b>show</b> 5:14 18:6,8 18:9 22:12 39:5 39:6 <b>showed</b> 26:9 46:14 <b>showing</b> 22:22 <b>shows</b> 18:17 57:25 <b>sides</b> 50:24 <b>sign</b> 25:12 42:20 <b>signed</b> 40:17 41:4 <b>similar</b> 52:4 <b>simply</b> 5:25 <b>sitting</b> 12:21 20:5	<b>situation</b> 25:2,10 37:12 49:6 <b>solely</b> 31:14 <b>Solicitor</b> 1:19 <b>somebody</b> 45:12 52:9,14,14 54:22 <b>someplace</b> 37:10 49:17 <b>somewhat</b> 16:19 51:21 52:3 <b>son</b> 12:10 <b>sorry</b> 12:12 16:17 34:11 <b>sort</b> 46:23,25 48:9,14 58:4 <b>sorts</b> 23:17 53:15 <b>Sotomayor</b> 5:16 5:25 6:3,11 7:9 7:21 10:17 11:2 11:11,15,19 12:2,19 18:18 19:2,7,12,15 29:24 47:13,15 47:18 <b>sought</b> 22:23 33:18 53:2 <b>sounds</b> 19:15 <b>soup</b> 16:4 <b>speak</b> 28:7 <b>speaking</b> 25:7 41:1 <b>specific</b> 13:12 29:16 36:15 52:1,1,1 <b>specifically</b> 3:17 4:2 15:20 26:4 45:2 57:20 <b>specify</b> 17:8 <b>speculate</b> 36:9 <b>Spilotro</b> 52:6 <b>spite</b> 5:19 <b>spoke</b> 25:4,5 <b>spot</b> 56:12 <b>spousal</b> 50:20	<b>SRI</b> 1:19 2:6 20:17 <b>Srinivasan</b> 1:19 2:6 20:16,17,20 21:3,12 22:6,15 23:23 24:12,24 25:7 26:14 27:7 27:14 28:9,14 28:22 29:4,14 30:3,9,21 <b>stand</b> 52:7 <b>standard</b> 3:13 7:7 14:2 16:10 25:15,19 26:16 27:18 43:15,17 43:20 61:15 <b>standards</b> 4:7 <b>standing</b> 55:8 <b>state</b> 51:8 <b>stated</b> 28:1 <b>statement</b> 12:19 13:14 <b>States</b> 1:1,14,21 2:7 3:12 20:18 <b>status</b> 60:25 <b>statute</b> 30:12 <b>stay</b> 12:10 <b>stayed</b> 59:9 <b>staying</b> 58:16,20 59:1 <b>step</b> 17:1 60:6,8 <b>stepping</b> 15:16 <b>stick</b> 9:16 <b>stop</b> 10:5 <b>store</b> 61:3 <b>strange</b> 23:20 <b>Street</b> 49:15 58:12 59:7,8 <b>stressed</b> 33:2 <b>stretch</b> 8:24 17:10 <b>strong</b> 10:7 25:3 <b>stronger</b> 10:14 <b>stuff</b> 27:6 <b>stupid</b> 5:7
---	---	--	---	---



<b>subjective</b> 6:14 <b>subjectively</b> 27:8 <b>submit</b> 4:1,6,9 5:1 48:1 <b>submitted</b> 4:8,16 5:18 32:6,7 40:15 61:19,20 62:3,5 <b>subsection</b> 30:24 <b>subsequently</b> 3:16 <b>suddenly</b> 37:20 37:22 <b>suffered</b> 47:12 <b>sufficient</b> 7:10 <b>sufficiently</b> 28:10,15,18 29:7 <b>suggest</b> 11:23 <b>suggested</b> 38:7 44:14 <b>suggesting</b> 51:5 <b>suggestion</b> 50:21 <b>suggests</b> 39:13 <b>superior</b> 23:21 41:10 <b>superiors</b> 4:16 16:22 25:25 26:10 27:5 32:7 41:22 42:1 61:20 <b>supervisors</b> 5:18 6:1 <b>supervisor's</b> 5:22 <b>support</b> 1:21 2:8 20:19 23:17 40:16 44:24,25 <b>suppose</b> 4:14 36:11 45:5 48:9 49:23 53:1,2 <b>supposed</b> 12:14 13:5,13 <b>supposes</b> 22:18 <b>suppressing</b> 3:14	<b>suppression</b> 14:13 25:20 26:2,16 27:19 <b>Supreme</b> 1:1,14 <b>sure</b> 16:9 18:3 22:1 25:10 47:6 55:21 <b>surely</b> 46:6,24 <b>suspect</b> 29:9 <b>suspect's</b> 36:12 <b>suspicion</b> 31:19 <b>sword</b> 41:23 <hr/> <b>T</b> <b>T</b> 1:17 2:1,1,3,13 3:7 <b>take</b> 12:14 13:5 13:13,17,24 21:15 26:22 36:20,24 37:22 38:10 45:11 55:23 56:2,2 57:1,3,8 <b>taken</b> 26:23,25 <b>talked</b> 4:25 <b>talking</b> 40:10,10 <b>talks</b> 61:2 <b>tavern</b> 49:20 <b>team</b> 41:11 43:3 <b>tell</b> 7:9 18:18,22 44:5 45:3 <b>ten</b> 18:19,19 <b>tend</b> 26:16 49:8 <b>tending</b> 23:10 <b>term</b> 33:7 <b>terms</b> 6:24 15:16 17:8 25:4,16 59:22 <b>test</b> 5:5,5,7,10 5:11,19,21 14:13 16:1,1,8 24:22 27:2,4,7 27:11 28:9,10 28:12,15,20,24 30:1,3 50:12 <hr/> <b>T</b>	<b>testified</b> 44:16 <b>testimony</b> 10:18 <b>Thank</b> 20:15,20 31:1,2,6 59:16 59:17 62:1 <b>thing</b> 12:15 <b>things</b> 12:14 14:8 17:23 24:3 36:9 44:18,22 53:13 54:13 55:16 58:13 <b>think</b> 4:23 5:9,13 6:12 7:6 8:3,5 8:10,24,25 10:16,21 11:8 12:22,24,25 13:6,22 15:8,15 15:17,19,19,25 16:11,12 17:4,4 17:10 20:10 21:6,7,12 22:15 22:21 24:8,12 24:24 25:22 27:23 28:8,9,11 28:14,17 29:10 32:19,19 33:19 34:5,19 35:23 36:22 37:16,24 38:8,13,23,24 39:6 40:6,14,19 41:9 42:21 43:7 43:10,15 44:7 45:18 46:7,19 47:2,3,4,6 48:12 49:12 50:16 51:18,20 51:20 52:9,14 53:12,22 54:6,7 55:2,21,22 56:16,24 57:10 57:21 58:10 59:11,25 60:5 60:11,19,25 61:7,21 <b>thinking</b> 13:4,15	35:15 37:9 38:4 <b>thinks</b> 16:23 <b>third</b> 39:20 <b>thought</b> 5:16 12:25 13:23 14:20 15:3 21:14 23:13 24:21 30:5 42:12 44:2 50:12 57:15,16 <b>threat</b> 17:8 35:20 35:21 57:5 <b>threatened</b> 29:21 34:3,7 53:10 56:4 <b>throw</b> 43:22 <b>tie</b> 9:21,25 10:2 17:22 19:17 61:13 <b>ties</b> 18:17 <b>time</b> 11:4 20:1,14 30:6 40:10 <b>TIMOTHY</b> 1:17 2:3,13 3:7 59:19 <b>told</b> 43:21,25 44:23 45:1 58:22 <b>top</b> 43:9 57:23 <b>tossed</b> 5:15 <b>totality</b> 7:3,7 14:15 <b>totally</b> 41:17 48:11,11 49:16 <b>trained</b> 33:6,11 33:18 <b>training</b> 14:19 <b>transpired</b> 41:14 61:19 <b>trial</b> 49:24 <b>tried</b> 35:15 43:22 43:24 <b>truthful</b> 32:6 <b>try</b> 60:13,15 <b>trying</b> 5:14 26:19	<b>two</b> 6:12 21:4,6 22:7,17 24:25 24:25 26:12 46:13 51:21 54:13 <hr/> <b>U</b> <b>ultimately</b> 42:8 42:13 61:9 <b>unconstitutional</b> 27:22 <b>understand</b> 18:12,20 33:12 34:18 41:3 42:23 46:17 <b>understandable</b> 23:16 <b>understanding</b> 6:16 <b>understood</b> 37:25 <b>undertake</b> 42:11 <b>undertook</b> 43:8 <b>undesirable</b> 31:25 <b>unfortunate</b> 61:5 <b>unique</b> 19:5 <b>United</b> 1:1,14,21 2:7 3:11 20:18 <b>unknown</b> 31:15 <b>unlawful</b> 49:9 <b>unquote</b> 58:11 <b>unreasonable</b> 25:2 27:13 31:12 61:6 <b>unusual</b> 15:19 <b>urge</b> 26:15 <b>use</b> 8:7 30:15 31:15 33:16 34:6 35:20 45:12 51:2 56:3 56:12 61:3 <b>useful</b> 51:21 <hr/> <b>V</b>
---	---	---	--	---

<b>v</b> 1:5 3:5,11,12 8:17,18 31:8 37:4 61:2 <b>valid</b> 46:25 47:5 47:8 48:10,11 48:11 <b>validity</b> 6:23 14:11 <b>valuable</b> 50:1 <b>various</b> 45:2 <b>vehicles</b> 52:16 <b>victim</b> 29:20,21 <b>view</b> 37:3,3 59:24 <b>viewed</b> 20:3,4 <b>violating</b> 4:4 5:12 16:10 61:17,24 <b>violation</b> 21:20 45:21 <b>violations</b> 33:3 <b>violent</b> 29:18 34:3 44:23 51:2	39:21 40:11,16 41:8 42:19,20 43:1 44:20 45:6 45:14,15,22,24 45:25 46:2,8,14 46:19,25 47:6,8 47:14 48:9,16 50:3,6,8,19,19 53:2 56:16 57:19 58:4 60:2 60:4,14 <b>warrants</b> 29:10 31:23 32:20 33:5 42:4 <b>Washington</b> 1:10 1:20,23 <b>wasn't</b> 11:12 39:6 <b>water</b> 26:16 <b>way</b> 6:22 20:3,4 20:5 21:15,23 24:9,10 28:17 40:22 41:24 44:11,12 50:22 <b>ways</b> 6:12 43:24 <b>weapon</b> 8:23 9:1 9:2,4,22 11:17 11:17,18,22,25 29:9 53:3 57:25 61:8,10,13 <b>weapons</b> 8:7 9:5 9:6,11 10:19 13:8 14:22 16:15 18:10 29:13 39:19 53:16 54:17,21 54:22 55:1,3,15 55:22 56:8,13 56:16 57:5,6,13 59:23 60:15 61:3 <b>wear</b> 18:5 <b>well-trained</b> 28:4 42:9 <b>went</b> 29:22 57:22	<b>weren't</b> 29:25 <b>we're</b> 8:18 13:5 20:5 35:7 56:2 <b>willing</b> 5:1 <b>Wilson</b> 40:17 <b>window</b> 43:23 <b>wiretap</b> 31:14,20 <b>Wolfson</b> 1:23 2:10 31:3,4,6 31:18 32:18 33:17 34:9,13 34:18,21 35:6,9 35:22 36:13,21 36:25 37:18,24 39:3,8,17,24 40:2,7,19,23 42:6,17,24 43:2 43:6 44:10,13 45:5,17 46:4,11 46:17,22 47:14 47:17,25 48:24 49:14 50:2,15 50:23 51:13,19 52:25 53:12,17 53:20 54:1,3,6 54:12,16 55:2,6 55:11,19,21 56:6,10,19,24 57:7,17 58:7,10 58:21 59:2 <b>wonderful</b> 27:1 <b>words</b> 14:21 44:6 <b>work</b> 5:1 46:7 <b>wouldn't</b> 21:24 21:25 22:4,13 57:1 <b>wrapped</b> 10:12 10:15 17:12,15 18:1 <b>wrestled</b> 48:3 <b>writ</b> 23:11 <b>wrong</b> 24:7,7 35:14 38:7	<b>x</b> 1:2,9  <b>Y</b> <b>years</b> 52:10  <b>1</b> <b>1</b> 30:25 <b>10-704</b> 1:4 3:4 <b>11</b> 20:6 <b>11:08</b> 1:15 3:2 <b>12-gauge</b> 36:15 <b>12:09</b> 62:4 <b>120th</b> 49:15 58:12 59:7 <b>1524(a)(3)</b> 15:6 30:13 <b>1950</b> 52:13 <b>1983</b> 25:22 <b>1998</b> 52:10 <b>1999</b> 52:10  <b>2</b> <b>2</b> 59:18 <b>20</b> 2:7 <b>2011</b> 1:11 <b>210.3</b> 30:24 <b>23</b> 7:6 <b>27(a)</b> 23:14  <b>3</b> <b>3</b> 2:4 <b>31</b> 2:11 <b>344</b> 27:17 <b>345</b> 28:1  <b>4</b> <b>41(c)(3)</b> 30:23 <b>45</b> 19:19 <b>45-caliber</b> 10:15 17:11 <b>48</b> 30:10  <b>5</b> <b>5</b> 1:11 <b>52</b> 22:16 <b>59</b> 2:14	<b>6</b> <b>6</b> 20:6  <b>9</b> <b>9</b> 26:3 <b>97th</b> 59:8 <b>98</b> 26:3
---	---	--	---	--